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ABSTRACT

The first two volumes of the Interstate Child Support Enforcement Laws Digest provide a collection of interstate laws pertaining to child support enforcement. The volumes, like their predecessor, the URESA Laws Digest, represent each state's Uniform Reciprocal Enforcement of Support Acts (URESA), and include a compilation of URESA codes and the case notes from the state's annotated codes. Similar material from the District of Columbia, Guam, Puerto Rico, and the Virgin Islands is included. The volumes provide original state laws as well as statutes enacted or amended since the publication of the URESA Laws Digest in October, 1984. Also provided are annotations of new cases that interpret state URESA laws and older cases and statutes that were omitted from the URESA Laws Digest. The compilation enables prosecutors and caseworkers to find the most current law for any of the 54 jurisdictions. It is organized for easy access to particular sections of a state's code. Material on each state is preceded by a table of contents linking sections of the state's code by number and heading to a page number in the digest. (RH)

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INTERSTATE CHILD SUPPORT ENFORCEMENT LAWS DIGEST

URESA Laws - Volume I
Alabama-Missouri

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Preface

The Interstate Child Support Enforcement Laws Digest is a collection of interstate laws pertaining to child support enforcement, both Uniform Reciprocal Enforcement of Support Acts (URESA) and non-URESA laws. The first two volumes represent each State's URESA's laws. The next volume, forthcoming, will focus on related interstate laws implemented in the 54 jurisdictions of the United States.

This statute and case law information is not readily available to prosecutors and caseworkers in local offices. Nowhere else can it be found in one publication. The availability of this information in one publication should aid in interstate case processing. The Digest will also be a valuable complement to the National Roster and URESA/IV-D Referral Guide published by the National Child Support Enforcement Association.

The Digest will allow prosecutors and caseworkers to find the most current law for any of the 54 jurisdictions. It is organized for easy access to particular sections of a State's Code. State abbreviations are found with the appropriate page numbers for each State's code, and each code is accompanied by an individual table of contents. In addition, binders and sets of 54 tabs can be ordered from the National Institute for Child Support Enforcement for a nominal fee (see form at the back of the publication).

These first two volumes of the Interstate Digest, like their predecessor, the URESA Laws Digest, are a compilation of URESA codes and the case notes that appear in the annotated codes of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. They include, in addition to original State laws, statutes enacted or amended since the publication of the URESA Laws Digest in October, 1984. They also include annotations of new cases that interpret State URESA laws and older cases and statutes that were omitted from the URESA Laws Digest.

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ALABAMA
CODE ALA. §§ 30-4-80 to 30-4-98

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ALABAMA

CODE ALA. §§ 30-4-80 to 30-4-98

§ 30-4-80. Purpose of Article.

The purposes of this article are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (A. 1951, No. 879, p. 1515, § 1.)

Cases

This article was designed to improve and extend the enforcement of duties of support and to make the support laws of adopting States uniform. Basically, the civil proceedings authorized by the act are designed .to provide a simplified, fair and convenient way to compel those who have a duty of support to fulfill their obligation without having to be extradited to another State. O'Neill v. O'Neill, 420 So.2d 264 (Ala.1982).

Cited in Whiteside v. McGuire, 281 Ala. 86, 199 So.2d 164 (1967); O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982).

The civil proceedings authorized by the Uniform Reciprocal Enforcement of Support Act are designed to provide a simplified, fair and convenient way to cause those who are obligated to support their minor children to do so without having to be extradited to another State. O'Hara v. Floyd, 47 Ala.App. 619, 259 So.2d 673 (1972).

Uniform Reciprocal Enforcement of Support Act is remedial in nature and should be liberally construed to achieve its object. Id.

§ 30-4-81. Definitions.

As used in the article, unless the context requires otherwise, the following terms shall have the meanings respectively ascribed to them by this section:

(1) "STATE." Such term includes any State, territory, or possession of the United States and District of Columbia in which this or substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE." Any State in which any proceeding pursuatnt to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE." Any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT." The juvenile court and, when the context requires, the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW." Such term includes both common and statute law.

(6) "DUTY OF SUPPORT." Such term includes any duty of support imposed or imposable by law or by any court order, decree or judgment, whether interlocutory or

final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "OBLIGOR." Any person owing a duty of support.

(8) "OBLIGEE." Any person to whom a duty of support is owed.

HISTORY: (A. 1951, No. 879, p. 1515, § 2.)

Cases

Cited in O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982); O'Neill v. O'Neill, 420 So.2d 264 (Ala.1982).

§ 30-4-82. Department of Pensions and Security Designated State Information Agency; Duties as to Enforcement of Support.

The Department of Pensions and Security is hereby designated the State Information Agency for the purpose of assembling and distributing information needed in connection with reciprocal enforcement of support pursuant to this article, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this article and to transmit the same to the State Information Agency of every other State which has an information agency comparable to the one hereby established.

(2) To maintain a register of such lists received from other States.

(3) To furnish, upon request of any court of this State, information relative to the names and addresses of courts States having jurisdiction under an act providing for reciprocal enforcement of support dependents.

HISTORY: (A. 1953, No. 824, p. 1110.)

§ 30-4-83. Duties Under State Law of Obligor Present in State Not Affected by Absence or Nonresidence of Obligee.

Duties of support arising under the law of this State, when applicable under § 30-4-84, bind the obligor present in this State, regardless of the presence or residence of the obligee.

HISTORY: (A. 1951, No. 879, p. 1515, § 4; A. 1953, No. 823, p. 1107, § 1)

Cases

Cited in O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982)

§ 30-4-84. Choice of Laws; Presumption as to Presence of Obligor.

Duties of support under this article are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought.

The obligor is presumed to have been present in the responding State during the period for which support is sought unless otherwise shown.

HISTORY: (A. 1951, No. 879, p. 1515, § 7; A. 1953, No. 823, p. 1107, § 2.)

Cases

Cited in O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982).

§ 30-4-85. Rights of State or Political Subdivisions Furnishing Support.

Whenever the State or political subdivision thereof has furnished support to an obligee, it has the same right to invoke the provisions of this article as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (A. 1951, No. 879, p. 1515, § 8; A. 1953, No. 823, p. 1107, § 3.)

§ 30-4-86. Extradition for Nonsupport.

The Governor of this State:

(1) May demand from the Governor of any State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) May surrender on demand by the Governor of any other State nay person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State.

The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he ahdd not fled therefrom. Neither the demand, the oath nor any proceedings for the extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (A. 1951, No. 879, p. 1515, § 5.)

Cases

Section is valid and enforceable.

The provision of this section, authorizing the extradition of a person for the crime of nonsupport, although he was not present in the demanding State at the time of the commission of the crime charged and he not having fled therefrom, is valid and enforceable. Harrison v. State, 38 Ala.App. 60, 77 So.2d 384 (1954), cert. den., 262 Ala. 701, 77 So.2d 287 (1955).

Indictment and rendition warrant falling within provisions of section.

Where the certified copy of the indictment and the rendition warrant showed that the crime for which appellant was sought to be extradited was the failure to support his child, it fell within the provisions of this section authorizing extradition without reference to the presence of petitioner in the demanding State. Harrison v. State, 38 Ala.App. 60, 77 So.2d 384 (1954), cert. den., 262 Ala. 701, 77 So.2d 387 (1955).

Burden is on petitioner to show he is not properly charged.

If petitioner, in habeas corpus proceedings on extradition warrant, is not properly charged under the laws of the demanding State, the burden is upon him to establish such fact. Harrison v. State, 38 Ala.App. 60, 77 So.2d 384 (1954), cert. den., 262 Ala. 701, 77 So.2d 387 (1955).

§ 30-4-87. Relief from Extradition.

Any obligor contemplated by § 30-4-86, who submits to the jurisdiction of the court of such other State and complies with the court's order of support shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

HISTORY: (A. 1951, No. 879, p. 1515, § 6.)

§ 30-4-88. Enforcement of Duties of Support Generally; Jurisdiction of Enforcement Proceedings.

(a) All duties of support are enforceable by petition, irrespective of the relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the juvenile court.

(b) A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian.

(c) In any proceeding under this article, the court may order interrogatories or depositions to be taken within or without the State, pursuant to the provisions of law applicable to such court.

(d) The court, whether acting as an initiating State or a responding State, may direct the District Attorney or some other prosecuting attorney for the State to represent the plaintiff in any proceeding under this article.

(e) Participation in any proceeding under this article shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (A. 1951, No. 879, p. 1515, § 9; A. 1953, No. 823, p. 1107, § 4.)

Cases

Cited in Ashwood v. Ashwood, 371 So.2d 924 (Ala.Civ.App.1979); O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982).

§ 30-4-89. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the respondent and his dependents for whom support is sought and all other pertinent information.

HISTORY: (A. 1951, No. 879, p. 1515, § 10.)

§ 30-4-90. Testimony of Husband and Wife; Communications Between Husband and Wife Not Privileged.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (A. 1951, No. 879, p. 1515, § 18.)

§ 30-4-91. Powers and Duties of Court of State Acting as Initiating State Generally.

(a) If the court of this State, acting as an initiating State, finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate and (3) this article to be transmitted to the court in the responding State.

If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court and that the court of the responding State acknowledge their receipt to the court of the initiating State.

(b) When the court of this State acting as an initiating State, has reason to believe that the defendant may flee the jurisdiction, it may request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if permissible under the law of the responding State.

HISTORY: (A. 1951, No. 879, p. 1515, § 11; A. 1953, No. 823, p. 1107, § 5.)

Cases

Cited in O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982).

§ 30-4-92. Receipt and Disbursement of Payments Transmitted by Court of Responding State, Etc.

The court of this State, when acting as an initiating State, shall have the duty, which may be carried out through the register or clerk of the court, to receive and disburse

forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (A. 1951, No. 879, p. 1515, § 17.)

§ 30-4-93. Powers and Duties of Court of State Acting as Responding State Generally.

(a) When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall:

(1) Docket the case,

(2) Notify the District Attorney,

(3) Set a time and place for a hearing, and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jursidiction.

(b) Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

(c) If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State.

HISTORY: (A. 1951, No. 879, p. 1515, § 12; A. 1953, No. 823, p. 1107, § 6.)

Cases

In general.

Final judgements for child support of a sister State require full faith and credit in the courts of Alabama, and Alabama courts may determine the amount of arrearage under the foreign judgement. Murphy v. Murphy, 395 So.2d 1047 (Ala.Civ.App. 1981).

Modification of prior order.

For case discussing whether an order issued pursuant to the Uniform Reciprocal Enforcement of Support Act can modify a prior order, see O'Neill v. O'Neill, 420 So.2d 264 (Ala.1982).

Alabama courts may modify support provisions in a sister State's divorce decree with respect to future installments when the parties are properly before it. Murphy v. Murphy, 395 So.2d 1047 (Ala.Civ.App.1981).

Cited in Willis v. Levesque, 402 So.2d 1003 (Ala.Civ.App.1981).

§ 30-4-94. Issuance of Order of Support Upon Finding of Duty to Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (A. 1951, No. 879, p. 1515, § 13; A. 1953, No. 823, p. 1107, § 7.)

Cases

Whether duty of support exists to be determined by court of responding State.

Cited in O'Neill v. O'Neill, 420 So.2d 261 (Ala.Civ.App.1982).

The primary matter for proof is whether a duty of support exists. The determination of such duty is made by the court of the intiating State. O'Hara v. Floyd, 47 Ala.App. 619, 259 So.2d 673 (1972).

§ 30-4-95. Transmittal of Copies of Orders of Support, Etc., to Court of Initiating State.

The court of this State, when acting as a responding State, shall cause to be transmitted to the court of the initiating State a copy of all orders of support or orders for reimbursement therefor.

HISTORY: (A. 1951, No. 879, p. 1515, § 14.)

§ 30-4-96. Powers of Court To Enforce Orders; Fees and Costs of Proceedings.

(a) In addition to the foregoing powers, the court of this State, when acting as the responding State, has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To obtain the body of the defendant by appropriate process when it has reason to believe that the defendant may flee the jurisdiction.

(2) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(3) To require the defendant to make payment at specified intervals to the register or clerk of the court or the obligee and to report personally to such register or clerk at such times as may be deemed necessary.

(4) To punish any defendant who shall violate any order of the court to the same extent as is provided by law for contempt of court in any other action or proceeding cognizable by the court.

(b) A court of this State, acting either as an initiating or responding State, may in its discretion direct that any part of or all fees and costs incurred in this State, including, without limitation by enumeration, docket fees, fees for service of process, seizure of property and stenographic service of both plaintiff and defendant, or either shall be paid

by the State. Where the action is brought by or through the State or an agency thereof there shall be no docket fee. Security for the costs may or may not be required when the petition is filed by or on behalf of a nonresident dependent, as the court may in its discretion direct.

HISTORY: (A. 1951, No. 879, p. 1515, § 15, A. 1953, No. 823, p. 1107, § 8.)

Cases

Cited in Fortson v. Hawkins, 294 Ala. 418, 321 So.2d 196 (1975).

§ 30-4-97. Transmittal of Payments Received, Etc., to Court of Initiating State.

The court of this State, when acting as a responding State, shall have the following duties, which may be carried out through the register or clerk of the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(2) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (A. 1951, No. 879, p. 1515, § 16.)

Cases

Cited in Kamp v. Morang, 277 Ala. 575, 173 So.2d 566 (1964).

§ 30-4-98. Remedies Cumulative.

The remedies provided in this article are in addition to and not in substitution for any other remedies.

HISTORY: (A. 1951, No. 879, p. 1515, § 3.)

ALASKA
ALASKA STAT. §§ 25.25.010 to 25.25.270

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ALASKA

ALASKA STAT. §§ 25.25.010 to 25.25.270

§ 25.25.010. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "COURT" means and includes a court having jurisdiction to determine the liability of persons for the support of dependents in the State and a State having a substantially similar reciprocal law;

(2) "DUTY OF SUPPORT" includes a duty of support imposed or imposable by law, or by a court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid together with penalties and interest on arrearages imposed under Alaska Stat. 47.23.020(a)(2)(C).

(3) "FOREIGN SUPPORT ORDER" means any support order defined in (10) of this section issued by a court of competent jurisdiction in another State;

(4) "INITIATING STATE" means a State in which a proceeding under this or a substantially similar reciprocal law is commenced;

(5) "LAW" includes both common and statute law;

(6) "OBLIGEE" means a person to whom a duty of support is owed;

(7) "OBLIGOR" means a person owing a duty of support;

(8) "RESPONDING STATE" means a State in which a proceeding under the proceeding in the initiating State is or may be commenced;

(9) "STATE" includes the State of Alaska and a State, territory, or possession of the United States and the District of Columbia, and a foreign country in which this or a substantially similar reciprocal law has been enacted;

(10) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (S.L.A. 1953, § 2, ch. 31; am.S.L.A. 1977; §§ 4, 5, ch. 126, am.S.L.A. 1981, § 2, ch. 96; am.S.L.A. 1982, § 2, ch. 118.)

Cases

Arrearages.

Under Alaska law, arrearages are recoverable in actions under this chapter. Bailey v. Hass, Sup.Ct.Op.No. 2593 (File Nos. 6177, 6688) P.2d (1982).

There is no requirement that a request for arrearages must be reduced to judgment by the petitioning State. Bailey v. Haas, Sup.Ct.Op. No. 2593 (File Nos. 6177, 6688) P.2d (1982).

Cited in Public Defender Agency v. Superior Court, 3rd Judicial Dist.Sup.Ct.Op. No. 1140 (File No. 2071) 534 P.2d 947 (1975).

§ 25.25.020. Additional Remedies.

The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

HISTORY: (S.L.A. 1958, § 3, ch. 31.)

§ 25.25.030. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under Alaska Stat. 25.25.060, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (S.L.A. 1953, § 4, ch. 31.)

§ 25.25.040. Extradition.

(a) The Governor of this State may:

(1) Demand from the Governor of another State the surrender of a person found in the other State who is charged in this State with the crime of failing to provide for the support of a person in this State, and

(2) Surrender on demand by the Governor of another State a person found in this State who is charged in the other State with the crime of failing to provide for the support of a person in the other State.

(b) The provisions for extradition of criminals consistent with this chapter shall apply to that demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although the person had not fled from it. Neither the demand, the oath nor any proceedings for extradition under this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (S.L.A. 1953, § 5, ch. 31.)

§ 25.25.050. Relief from Extradition.

An obligor contemplated by Alaska Stat. 25.25.040, who submits to the jurisdiction of the court of this or another State and complies with the court's order of support, is

relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of compliance.

HISTORY: (S.L.A. 1953, § 6, ch. 31; am.S.L.A. 1977, § 6, ch. 126.)

Cases

The effect of a post judgment dismissal of the underlying California paternity suit on a final Alaska judgment is determined according to Alaska law. Rubalcava v. Hall, 674 P.2d 767 (Alaska, 1983).

§ 25.25.060. Choice of Law.

Duties of support applicable under this law are those imposed or imposable under the laws of a State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which the support is sought until otherwise shown.

HISTORY: (S.L.A. 1953, § 7, ch. 31.)

Cases

Applied in Bailey v. Haas, Sup.Ct.Op. No. 2593 (File Nos. 6177, 6688) P.2d (1982).

§ 25.25.070. Furnishing Support by State or Political Subdivision.

When a State or political subdivision of the State has furnished support to an obligee, it has the same right to invoke the provisions of this chapter as the obligee to whom the support was furnished for the purpose of securing reimbursement of the expenditures and of obtaining continuing support.

HISTORY: (S.L.A. 1953, § 8, ch. 31.)

§ 25.25.080. Jurisdiction and Enforcement.

(a) Jurisdiction for all proceedings under this chapter is in the superior court.

(b) All duties of support, including the duty to pay arrears, are enforceable by a proceeding under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (S.L.A. 1953, § 9, ch. 31; am.S.L.A. 1976, § 2, ch. 251.)

Cases

Enforcement of support obligation for nonvisitation.

In the appeal of an action to enforce an Oregon judgment for accrued and unpaid child support, a provision in the judgment requiring the father to pay the mother $25.00

for each weekend without visitation for child care expenses unless the mother requested no visitation was interpreted according to the rule of contract interpretation that conditions are disfavored. The payments were treated as an absolute obligation that was part of the child support obligation without conditions concerning geographical limitation, impracticality, lack of information about the mother's whereabouts, reimbursements for actual child care expenses or credit for nonweekend visitation. Logghe v. Jasmer, Sup.Ct.Op. No. 2842 (File No. 6897), 686 P.2d 694 (1984).

Applied in Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska, 1984).

Arrearages.

Under Alaska law, arrearages are recoverable in actions under this chapter. Bailey v. Haas, Sup.Ct.Op. No. 2593 (File Nos. 6177, 6688) P.2d (1982).

There is no requirement that a request for arrearages must be reduced to judgment by the petitioning State. Id.

The petition's failure to include a prayer for arrearages did not justify dismissal of the claim since the function of a pleading is to give notice of the type of claim asserted, the body of the petition State that defendant had contributed nothing toward the support for his daughter, and the motion for an order of support specifically requested arrearages, therefore, defendant had notice of the claim for arrearages at the very latest by the date when the motion was filed. Id.

§ 25.25.090. Complaint for Support.

The complaint shall be verified and shall state the name and, if known to the plaintiff, the addresses and circumstances of the defendant, the dependents for whom support is sought, and all other pertinent information. The plaintiff may include in or attach to the complaint information which may help in locating or identifying the defendant including, but not limited to, a photograph of the defendant, a description of any distinguishing marks, other names and aliases by which the defendant has been or is known, the name of the defendant's employer, the defendant's fingerprints, or the defendant's Social Security number.

HISTORY: (S.L.A. 1953, § 10, ch. 31.)

Cases

Cited in Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska, 1984).

§ 25.25.100. Officials To Represent Plaintiff.

The child support enforcement agency shall represent the plaintiff in a proceeding under this chapter.

HISTORY: (S.L.A. 1953, § 11, ch. 31; am.S.L.A. 1971, § 6, ch. 104; am.S.L.A. 1976, § 3, ch. 251.)

§ 25.25.110. Complaint for a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (S.L.A. 1953, § 12, ch. 31.)

§ 25.25.120. Court Duty When Alaska Initiating State.

If the court of this State, acting as an initiating State, finds that the complaint sets out facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or the defendant's property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate, and (3) this chapter, to be transmitted to the court in the responding State. If the name and address of the court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (S.L.A. 1953, § 13, ch. 31.)

Cases

Applied in Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska, 1984).

§ 25.25.130. Costs and Fees.

The supreme court may provide by rule that a court of this State, when the State is acting as an initiating State, may not require payment of either a filing fee or other costs from the obligee but may request the court of the responding State to collect fees and costs from the obligor. The supreme court may also provide by rule that a court of this State, when the State is acting as a responding State, may not require payment of a filing fee or other costs from the obligee, but may direct that all fees and costs requested by the court in the initiating State and those incurred in this State when acting as a responding State (including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligee) be paid in whole or in part by the obligor. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (S.L.A. 1953, § 14, ch. 31; am.S.L.A. 1960, § 1, ch. 19; am.S.L.A. 1977, § 7, ch. 126.)

§ 25.25.140. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction, it may:

(1) As an initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that is permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the defendant by appropriate process. If the court of this State, acting as a responding State, obtains the body of the defendant, it may then release the defendant on recognizance or after bond is given in an amount set by the court to assure appearance at the hearing.

HISTORY: (S.L.A. 1953, § 15, ch. 31; am.S.L.A. 1977, § 8, ch. 126.)

§ 25.25.150. State Information and Locator Agency.

(a) The child support enforcement agency is designated as the State Information and Locator Agency for all matters concerning the enforcement of support obligations under Alaska Stat. 47.23 and under this chapter, and it is its duty to:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and the appropriate agency offices and their addresses and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar statute;

(2) Maintain a register of similar lists received from other States.

(b) The child support enforcement agency shall also locate obligors by utilizing all sources of information and records available in the State, and in other States as appropriate. These sources include telephone directories, real property records, personal property records, vital statistics records, police records, records of appropriate Federal agencies, records of employers who are willing to cooperate, and official records of the State including records of the State Departments of Public Safety, Health and Social Services, Revenue, and Labor. If State agencies or departments have information or records concerning the obligor which are made confidential by State statute, and they are not prohibited from doing so by Federal statute or regulation, those agencies or departments shall cooperate with the child support enforcement agency at its request by supplying at least (1) the last known address of the obligor and (2) the name and address of the last known employer of the obligor, if that information is in their possession. This information shall be kept confidential by the child support enforcement agency and may be used by the agency only for purposes of child support enforcement.

HISTORY: (S.L.A. 1953, § 16, ch. 31; am.S.L.A. 1971, § 6, ch. 104; am.S.L.A. 1977, § 9, ch. 126.)

§ 25.25.160. Agency Duty When Alaska Responding State.

When the child support enforcement agency of this State, acting as a responding State, receives from the court or child support enforcement agency of an initiating State the copies mention in Alaska Stat. 25.25.120, it shall:

(1) Attempt to locate the obligor,

(2) Present the case to the court to docket and to set a time and place for hearing, if the obligor does not agree to entry of a voluntary order, and

(3) Take action necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (S.L.A. 1953, § 17, ch. 31; am.S.L.A. 1977, § 10, ch. 126.)

Cases

Cited in Rubalcava v. Hall, 674 P.2d 767 (Alaska, 1983).

§ 25.25.170. Further Duty of Responding State.

If the obligor or the obligor's property is not found in this State and the child support enforcement agency discovers that the obligor or the property may be found in another State, it shall forward the documents received from the initiating State to the State Information Agency in the State in which the obligor is believed to be located. The agency shall inform the initiating State of its action immediately.

HISTORY: (S.L.A. 1953, § 18, ch. 31; am.S.L.A. 1977, § 11, ch. 126.)

§ 25.25.171. Hearing and Continuances.

If the obligee is not present at a hearing on the merits of the complaint and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party shall continue the hearing to permit evidence relative to the duty to be adduced by either party, by deposition, or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (S.L.A. 1976, § 4, ch. 251.)

§ 25.25.173. Rules of Evidence.

In a hearing for the enforcement of this chapter, the court is governed by the rules of evidence applicable in a civil suit in superior court. If the action is based upon a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The order may be modified by the courts of this State.

HISTORY: (S.L.A. 1976, § 4, ch. 251.)

§ 25.25.175. Paternity.

If the obligor asserts as a defense that the obligor is not the father of the child for whom support is sought and the court finds that the defense is not frivolous, then if both of the parties are present at the hearing, or the court finds that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue.

Otherwise, the court may continue the action until the paternity issue has been adjudicated. Nothing in this section is intended to diminish the standard of proof for establishing paternity.

HISTORY: (S.L.A. 1976, § 4, ch. 251.)

§ 25.25.180. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to the order.

HISTORY: (S.L.A. 1953, § 19, ch. 31.)

§ 25.25.190. Transmitting Orders to Initiating State.

The court of this State, when acting as a responding State, shall cause to be transmitted to the court of the initiating State a copy of all orders of support or orders for reimbursement therefor.

HISTORY: (S.L.A. 1953, § 20, ch. 31.)

§ 25.25.200. Additional Powers of Court.

(a) The court of this State, when acting as the responding State, has the power to subject the defendant to terms and conditions the court may consider proper to assure compliance with its orders and in particular to:

(1) Require the defendant to furnish recognizance in the form of a cash deposit or bond of the character and in the amount which the court may consider proper to assure payment of the amount required to be paid by the defendants;

(2) Require the defendant to make payments at specified intervals to the child support enforcement agency and to report personally to the agency at times that are considered necessary;

(3) Punish the defendant who violates an order of the court to the same extent as is provided by law for contempt of court in any other suit or proceeding cognizable by the court.

(b) Payment may be made by personal check if that method of payment had been previously made regularly to the clerk of the court or obligee, or certified check or postal money orders are not readily available.

HISTORY: (S.L.A. 1953, § 21, ch. 31; am.S.L.A. 1977, § 12, ch. 126.)

§ 25.25.210. Additional Agency Duties When Alaska Responding State.

The child support enforcement agency of this State, when acting as a responding State, has the following duties:

(1) Upon the receipt of a payment made by the defendant under an order of the court or other wise, to transmit the payment immediately to the court or child support enforcement agency of the initiating State and

(2) Upon request, to furnish to the court or child support enforcement agency of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (S.L.A. 1953, § 22, ch. 31; am.S.L.A. 1977, § 14, ch. 126.)

§ 25.25.220. Additional Agency Duty When Alaska Initiating State.

The child support enforcement agency of this State, when acting as an initiating State, has the duty to receive and disburse in accordance with law or regulation all payments made by the defendant or transmitted by the court or child support enforcement agency of the responding State.

HISTORY: (S.L.A. 1953, § 23, ch. 31; am.S.L.A. 1977, § 14, ch. 126.)

§ 25.25.230. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to a relevant matter, including marriage and parentage.

HISTORY: (S.L.A. 1953, § 24, ch. 31.)

§ 25.25.240. Application of Payments.

An order of support issued by a court of this State, when acting as a responding State, does not supersede a previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid under either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (S.L.A. 1953, § 24, ch. 31.)

§ 25.25.250. Effect of Participation in Proceeding.

Participation in a proceeding under this chapter does not confer upon any court jurisdiction over any of the parties to that proceeding in any other proceeding. The superior court may not adjudicate custody, visitation, or property rights in proceedings under this chapter.

HISTORY: (S.L.A. 1953, § 26, ch. 31; am.S.L.A. 1984, § 5, ch. 144.)

§ 25.25.252. Proceedings Not To Be Stayed.

Except as provided in Alaska Stat. 25.25.258(c), a court of this State, when the State is a responding State, may not stay the proceeding or refuse a hearing under this chapter

because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In the interest of a speed resolution of the support issue, it may require the oligor to post a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment in the other proceeding provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. After the court has conformed its support order to the amount in the other action, it may not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (S.L.A. 1977, § 15, ch. 126.)

§ 25.25.254. Registration of Foreign Support Orders.

(a) If the duty of support is based on a support order of a court of competent jurisdiction in another State, the obligee may register that foreign support order in the superior court in the manner, with the effect, and for the purposes provided in Alaska Stat. 25.25.254--25.25.258.

(b) The clerk of the court shall maintain a Registry of Foreign Support Orders in which the clerk shall file the foreign support orders registered with the court.

(c) An obligee seeking to register a foreign support order in the superior court shall transmit to the clerk of the court

(1) Three certified copies of the order with all modifications of it,

(2) One copy of the Reciprocal Enforcement of Support Act of the State in which the order was made, and

(3) A statement, verified and signed by the obligee, showing the last known mailing address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon the receipt of these documents, the clerk of the court shall file them in the registry of foreign support orders. The filing constitutes registration under this section. If permitted by a rule of the supreme court under Alaska Stat. 25.25.130, no filing fee or payment of other costs may be required of the obligee.

(d) Promptly upon registration, the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the mailing address of the obligee. The clerk shall also docket the case and notify the child support enforcement agency of this action. The agency shall proceed to enforce the order.

HISTORY: (S.L.A. 1977, § 15, ch. 126.)

Cases

Applied in Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska, 1984); cited in Rubalcava v. Hall, 674 P.2d 767 (Alaska, 1983).

§ 25.25.256. Agency To Represent Obligee.

Upon request of the obligee, the child support enforcement agency shall represent the obligee in proceeding to register a foreign support order in this State.

HISTORY: (S.L.A. 1977, § 15, ch. 126.)

§ 25.25.258. Effect of Registration; Enforcement Procedures.

(a) Upon registration, the foreign support order shall be treated in the same manner as a support order issued by the superior court. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in a like manner.

(b) The obligor has 30 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief.

(c) At a hearing to enforce the registered support order, the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a foreign money judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for the appeal has expired, or the order is vacated or otherwise modified, upon satisfactory proof that the obligor has furnished security for payment of the support order as required by the State in which the support order was issued. If the obligor shows to the court any relevant ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (S.L.A. 1977, § 15, ch. 126.)

Cases

Although personal jurisdiction is not required to register a foreign support judgment under this chapter such jurisdiction is required for enforcement of the foreign judgment. Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska, 1984).

The effect of a postjudgment dismissal of the underlying California paternity suit on a final Alaska judgment is determined according to Alaska law. Rubalcava v. Hall, 674 P.2d 767 (Alaska, 1983).

Arrears on a pendente lite child support order are due despite the dismissal of the underlying paternity suit. Id.

Defendant waived any objection that he could have asserted to an arrears judgment by voluntarily dismissing his appeal from the judgment after the California superior court had dismissed the paternity action pursuant to which the original California pendente lite order had been issued. Id.

§ 25.25.260. Uniformity of Interpretation.

This chapter shall so be interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (S.L.A. 1953, § 28, ch. 31.)

§ 25.25.270. Short Title.

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

HISTORY: (S.L.A. 1953, § 29, ch. 31.)

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ARIZONA

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§ 12-1651. Definitions.

In this article, unless the context otherwise requires:

1. "COURT" means the superior court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

2. "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

3. "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this law.

4. "INITIATING COURT" means the court in which a proceeding is commenced.

5. "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

6. "LAW" includes both common and statutory law.

7. "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

8. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

9. "PROSECUTING ATTORNEY" means the public prosecutor in the appropriate county who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

10. "REGISTER" means to file in the Registry of Foreign Support Orders.

11. "REGISTERING COURT" means any court of the State in which a support order of a rendering State is registered.

12. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

13. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

14. "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.

15. "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

16. "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Before party can have remedy under Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., there must be a duty imposed on another giving such party a right to the remedy under Act. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

Proceedings under the Uniform Reciprocal Enforcement of Support Act (former § 12-1651 et seq.) were purely statutory, and jurisdiction of the superior court, although it was a court of general jurisdiction, was circumscribed by the provisions of the Act which conferred jurisdiction to determine support matters; consequently, the superior court, when acting under the provisions of the Act, was not acting as a court of general jurisdiction. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Determination of superior court in prior proceeding brought under the Uniform Reciprocal Enforcement of Support Act (former § 12-1651 et seq. which limited jurisdiction of superior court, though a court of general jurisdiction, to a determination of support matters) was not conclusive as to later separate maintenance action with respect to marital status of the parties. Id.

Arizona courts could not proceed against person found in Arizona and guilty under Michigan law of failure to support indigent parents, in absence of Arizona statute requiring children to support indigent parents. Op.Atty.Gen. No. 62.81.L.

Purpose.

Purpose of Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., is to enable a dependent in one State to initiate proceeding in State of her domicile for purpose of securing money for support from person who resides in another State and who is legally liable for support of such dependent. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

Uniform Reciprocal Enforcement of Support Act (former § 12-1651 et seq.) was designed to enable a dependent in one State to initiate proceeding in the State of her domicile for the purpose of securing money for support from a person residing in another State who was legally liable for the support of such dependent; and the remedies provided by the Act were in addition to and not in substitution for any other remedies. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Duty of support.

Father still owed a duty of support to his child, notwithstanding mother's interference with his right to custody. Campbell v. Campbell (1980) 126 Ariz.App. 558, 617 P.2d 66.

Duty of support is only real issue in reciprocal support proceedings, but court, in making that determination, may inquire into matters incidental thereto. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Emancipated or adult children.

In action by former wife under Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., to recover arrearages in child support awarded in California divorce decree, trial court could enter a judgment for arrearages even though minor children had reached majority. Tande v. Bongiovanni, 678 P.2d 531 (Ariz.App., 1984).

Superior court did not have jurisdiction under the Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., to enforce by contempt payment of child support arrearages after the children had been emancipated or had reached majority. State ex rel. Cordova v. Cordova (1974) 21 Ariz.App. 431, 520 P.2d 525.

§ 12-1652. Remedies Additional to Those Now Existing.

The remedies provided in this article are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Remedies available under the Revised Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., to enforce support orders are not exclusive. Tande v. Bongiovanni, 688 P.2d 1012 (Ariz., 1984).

Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., does not create substantive rights, but rather provides remedy for enforcing rights which are in addition to and not in substitution for any other remedies which may be available. Tande v. Bongiovanni, 678 P.2d 531 (Ariz.App., 1984).

Before remedial provisions of the Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., may be invoked, there must be a duty of support imposed upon respondent which gives petitioner the right to a remedy. Id.

For purposes of Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., existence of a duty to support is governed by law of responding State. Id.

Uniform Reciprocal Enforcement of Support Act is only a supplemental remedy for enforcement of child support orders, and orders issued by a court acting as a responding State do not affect or supersede any previous order of support. Id.

Where father never objected to consolidation of order to show cause in divorce action with order to show cause in Uniform Reciprocal Enforcement of Support Act action relative to his failure to pay up arrearage in his child support payments due under divorce decree, and father participated in consolidated hearing without voicing any objection or making a motion to vacate order of consolidation, father was precluded from claiming for first time on appeal that it was error for trial court to consolidate the orders. Westberry v. Reynolds (1982) 134 Ariz.App. 29, 653 P.2d 379.

Uniform Reciprocal Enforcement of Support Act is only a supplemental remedy for enforcement of child support orders, and orders issued by a court acting as a responding State do not affect or supersede any previous order of support. Id.

While remedies provided in Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq. are included in section of Family Responsibility Act, § 12-2451 et seq., which provides that duties of support "may be enforced by all civil and criminal remedies provided by law," availability of the URESA remedy is subject to procedural safeguards set forth in URESA. Campbell v. Campbell (1980) 126 Ariz.App. 558, 617 P.2d 66.

Before party can have remedy under Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., there must be a duty imposed on another giving such party a right to the remedy under Act. State ex rel. Arvayo v. Guerrero (1974) 21 Ariz.App. 173, 517 P.2d 526.

Uniform Reciprocal Enforcement of Support Act (former § 12-1651 et seq.) was designed to enable a dependent in one State to initiate proceedings in the State of her domicile for the purpose of securing money for support from a person residing in another State who was legally liable for the support of such dependent; and the remedies provided by the Act were in addition to and not in substitution for any other remedies. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Election of remedies.

Doctrine of election of remedies did not operate to bar wife's separate maintenance action instituted subsequent to reciprocal support proceedings. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Standing.

Prior to entry of a dissolution decree specifically awarding custody to a particular parent, both parents are considered as having legal custody and thus either would have standing for purpose of invoking Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., support remedies on behalf of minor child of parties. Campbell v. Campbell (1980) 126 Ariz.App. 558, 617 P.2d 66.

Mother did not have standing to invoke Uniform Reciprocal Enforcement and Support Act, § 12-1651 et seq., remedies in order to obtain child support from father on behalf of their child where marriage of parties was dissolved and custody of child was expressly awarded to father, and mother subsequently retained physical custody in violation of custody award. Id.

Res judicata.

Determination of superior court in prior proceeding brought under the Uniform Reciprocal Enforcement of Support Act (former § 12-1651 et seq.), which limited

jurisdiction of superior court, though a court of general jurisdiction, to a determination of support matters, was not conclusive as to later separate maintenance action with respect to marital status of the parties. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

§ 12-1653. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 12-1656, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Father's duty of support of minor children was governed by Arizona law and was circumscribed by order in divorce action terminating support payments, even though mother was California resident at time of divorce, where divorce was granted in Arizona divorce action in which support payments were later terminated. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

§ 12-1654. Interstate Rendition.

A. The Governor of this State may:

1. Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in that State with failing to provide for the support of any person.

2. Surrender on demand by the Governor of another State a person found in this State who is charged criminally in this State with failing to provide for the support of any person.

B. Provisions for extradition of criminals not inconsistent with this article apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom.

C. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1655. Conditions of Interstate Rendition.

A. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this article, or that any proceeding would be of no avail.

B. If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiate, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Where extradition is requested in nonsupport case, and man avails himself of statutory remedy, entry of court order in Arizona prevents Governor from granting extradition until the man fails to comply with court order. Op.Atty.Gen. No. 63.30.L.

§ 12-1656. Choice of Law.

Duties of support applicable under this article are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Validity of foreign judgment must be determined from laws of State where judgment was rendered. Ibach v. Ibach (1979) 123 Ariz. 507, 600 P.2d 1370.

Where, in Wisconsin paternity proceedings, court found that act of sexual intercourse occurred in Wisconsin, that minor child was conceived in Wisconsin and child's birth occurred in Wisconsin. Wisconsin court, after finding that defendant was properly served outside the State, properly concluded that assumption of jurisdiction under long.arm statute was consonant with due process tenants of fair play and substantial justice, and properly assumed personal jurisdiction over defendant nonresident. Bebeau v. Berger (1974) 22 Ariz.App. 522, 529 P.2d 234.

Father's duty of support of minor children was governed by Arizona law and was circumscribed by order in divorce action terminating support payments, even though mother was California resident at time of divorce, where divorce was granted in Arizona divorce action in which support payments were later terminated. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

§ 12-1657. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this article as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1658. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this article, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Mother did not have standing to invoke Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., remedies in order to obtain child support from father on behalf of their child where marriage of parties was dissolved and custody of child was expressly awarded to father, and mother subsequently retained physical custody in violation of custody award. Campbell v. Campbell (1980) 126 Ariz.App. 558, 617 P.2d 66.

Superior court did not have jurisdiction under the Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., to enforce by contempt payment of child support arrearages after the children had been emancipated or had reached majority. State ex rel. Cordova v. Cordova (1974) 21 Ariz.App. 3d 431, 520 P.2d 525.

Duty of support is only real issue in reciprocal support proceedings, but court, in making that determination, may inquire into matters incidental thereto. Weller v. Weller (1971) 14 Ariz.App. 42, 480 P.2d 379.

Contempt.

Contempt was available as a remedy to enforce trial court's order for child support under the Revised Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., even though the children had reached majority; overruling State ex rel. Cordova v. Cordova, 520 P.2d 525 (Ariz. App., 1974) and disagreeing with Fox v. Fox, 371 N.E.2d 1254 (Ill. App., 1975). Tande v. Bongiovanni, 688 P.2d 1012 (Ariz., 1984).

§ 12-1659. Jurisdiction.

Jurisdiction of any proceeding under this article is vested in the superior court.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Superior court has jurisdiction at any time after indigent child's commitment to State children's colony to determine ability of child's State or parents to pay for child's maintenance at colony. Op.Atty.Gen. No. 63.14.

§ 12-1660. Contents and Filing of Complaint for Support; Venue.

A. The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom upport is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on this person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

B. The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1979, ch. 90, § 3.)

§ 12-1661. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney upon the request of the court shall represent the obligee in any proceeding under this article. If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may undertake the representation.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1662. Complaint for a Minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Prior to entry of a dissolution decree specifically awarding custody to a particular parent, both parents are considered as having legal custody and thus either would have standing for purpose of invoking Uniform Reciprocal Enforcement of Support Act support remedies on behalf of minor child of parties. Campbell v. Campbell (1980) 126 Ariz.App. 558, 617 P.2d 66.

For purpose of determining ability of the State or parents of indigent child committed to State children's colony to pay for child's maintenance at colony, county responsible for the maintenance could sue guardian or parent in any county in Arizona or, if parents had left State, board of children's colony could file an action against parents pursuant to Uniform Reciprocal Enforcement of Support Act, § 12-1662. Op.Atty.Gen. No. 63.14.

§ 12-1663. Duty of Initiating Court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the the obligor or his property, it shall so certify and cause three copies of the complaint and its certificate and one copy of this article to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1664. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State. Such costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Person filing a proceeding under the Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., is not, when referred to county attorney's office by county welfare, required to pay a filing fee to superior court clerk; either petitioner or respondent coming into court in person and without State aid may file a pauper's affidavit, and determination whether fees, costs, etc., shall be fixed to affiant is matter within court's sound discretion. Op.Atty.Gen. No. 61.73.

§ 12-1665. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

1. As an initiating court, request in its certificate that the responding court obtain the person of the obligor by appropriate process.

2. As a responding court, obtain the person of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1666. State Information Agency.

A. The Attorney General is designated as the State Information Agency under this article, and he shall:

1. Compile a list of the courts and their addresses in this State having jurisdiction under this article and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this article and a statement of their effective date to all other State Information Agencies.

2. Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this article.

3. Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the law it receives from courts or information agencies of other States.

B. If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate, and requests made to the Social Security Administration as permitted in the Social Security Act as amended.

C. After the deposit of three copies of the complaint and certificate and one copy of the law of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, the Attorney General may undertake the representation.

HISTORY: (L. 19700, ch. 90, § 3.)

§ 12-1667. Duty of the Court and Officials of this State as Responding State.

A. After the responding court receives copies of the complaint, certificate and law from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

B. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

C. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

In action by former wife under Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., to recover arrearages in child support awarded in California divorce decree, county attorney could represent children, even though they were no longer minors. Tande v. Bongiovanni, 678 P.2d 531 (Ariz.App., 1984).

§ 12-1668. Further Duties of Court and Officials in the Responding State.

A. The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

B. If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this article apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

C. If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1669. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1670. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1671. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1672. Rules of Evidence.

In any hearing for the civil enforcement of this article the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity under § 12-1676 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Where, in Wisconsin paternity proceedings, court found that act of sexual intercourse occurred in Wisconsin, that minor child was conceived in Wisconsin and that child's birth occurred in Wisconsin, adjudication of the paternity issue was conclusive between the parties and hence res judicata. Bebeau v. Berger (1974) 22 Ariz.App. 522, 529 P.2d 234.

Where, in Wisconsin paternity proceedings, court found that act of sexual intercourse occured in Wisconsin, that minor child was conceived in Wisconsin and child's birth occured in Wisconsin, Wisconsin court, after finding that defendant was properly served outside the State, properly concluded that assumption of jurisdiction under long arm statute was consonant with due process tenets of fair play and substantial justice, and properly assumed personal jurisdiction over defendant nonresident. Id.

Intent of provision of this section that determination or enforcement of a duty of support owed to one obligee is not affected by any interference by another obligee with rights of custody or visitation granted by a court is to require that disputes over interference with visitation or custody rights be litigated in divorce action and not in reciprocal action. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

Dismissal of divorced wife's complaint for reimbursement and support pursuant to Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., because order had terminated divorced husband's duty to support until wife honored visitation rights of divorce decree did not violate provision of this section that the determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court. Id.

§ 12-1673. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this article shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

In general.

Purpose of Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., is to enable a dependent in one State to initiate proceedings in State of her domicile for purpose of securing money for support from person who resides in another State and who is legally liable for support of such dependent. State ex rel. Arvayo v. Guerrero (1973) 21 Ariz.App. 173, 517 P.2d 526.

§ 12-1674. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1675. Additional Powers of Responding Court.

In addition to other powers granted to the court in this article, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders, and in particular to:

1. Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

2. Require the obligor to report personally and to make payments at specified intervals to the clerk of the court, and

3. Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1676. Paternity or Maternity.

If the obligor asserts as a defense that he is not the father of the child or that she is not the mother of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity or maternity issue. Otherwise the court may adjourn the hearing until the paternity or maternity issue has been adjudicated.

HISTORY: (L. 1970, ch. 90, § 3; am.L. 1973, ch. 172, § 29.)

Cases

In general.

Putative father who raised substantial question of fact in his responsive pleadings to motion for an order to establish support for the subject child, as to validity of foreign court's jurisdiction to decide paternity issue as part of dissolution proceeding at which putative father was not present, was entitled to a hearing at which he could attack foreign decree. Schilz v. Superior Court In and For Maricopa County, 695 P.2d 1103 (Ariz., 1985).

Jurisdiction.

Question of foreign court's jurisdiction to decide paternity issue pursuant to divorce suit was properly before Arizona court in proceeding under Uniform Reciprocal Enforcement of Support Act, § 12-1651 et seq., in which mother sought to enforce foreign court's adjudication of paternity against putative father who was party to, but did not attend, foreign divorce proceeding. Schilz v. Superior Court In and For Maricopa County, 695 P.2d 1103 (Ariz., 1985).

Sufficiency of evidence.

Putative father, in response to motion for an order to establish support of the child, presented sufficient uncontroverted facts in his pleadings to overcome presumption that foreign State had jurisdiction to decide paternity issue pursuant to dissolution proceeding, such that dissolution decree was not entitled to full faith and credit. Schilz v. Superior Court In and For Maricopa County, 695 P.2d 1103 (Ariz., 1985).

Duly authenticated paternity judgment of a court of general jurisdiction of a sister State was prima facie evidence of that court's jurisdiction to render it and of the paternity issue which judgment purported to adjudicate. Id.

§ 12-1677. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

1. To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise, and

2. To furnish to the intiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1678. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. Such duty may be carried out through the clerk of the court.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1679. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this article because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court shall conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1680. Application of Payments.

A support order made by a court of this State pursuant to this article does not nullify and is not nullified by a support order made pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1970, ch. 90, § 3; am.L. 1979, ch. 99, § 2.)

Cases

Construction and application.

Colorado court did not lack personal jurisdiction over wife who initiated action for overdue support and appeared in the proceedings, and the court could validly modify wife's Arizona support order. Ibach v. Ibach (1979) 123 Ariz. 507, 600 P.2d 1370.

Uniform Reciprocal Enforcement of Support Act (Ariz.Rev.Stat. § 12-1680 and Colo.Rev.Stat. § 14.5.132) conferred jurisdiction upon Colorado court to modify spousal support provisions of Arizona divorce decree. Id.

§ 12-1681. Effect of Participation in Proceeding.

Participation in any proceeding under this article does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (L. 1970, ch. 90, § 3.)

Cases

Construction and application.

In proceeding for overdue support wherein Colorado court entered nunc pro tunc judgment modifying Arizona support decree, the Colorado court was empowered to enter the nunc pro tunc judgment, since its prior failure to have a written judgment entered immediately following the hearing was a clerical error under Colorado law and could not have been attributed to judicial discretion, and thus the Colorado judgment was entitled to full faith and credit. Ibach v. Ibach (1979) 123 Ariz. 507, 600 P.2d 1370.

Even though this section of the Uniform Reciprocal Enforcement of Support Act (Ariz.Rev.Stat. § 12-1681 and Colo.Rev.Stat. § 14.5.133) provides that participation in any proceeding under the Act does not confer jurisdiciton upon any court over any parties thereto in any other proceeding, such provision does not prohibit a court from deciding whether a plaintiff is entitled to support and, if so, in what amount. Id.

Colorado court did not lack personal jurisdiction over wife who initiated action for overdue support and appeared in the proceedings, and the court could validly modify wife's Arizona support order. Id.

Counterclaims.

Uniform Reciprocal Enforcement of Support Act (Ariz.Rev.Stat. § 12-1681 and Colo.Rev.Stat. § 14.5.133) precludes counterclaims based merely on theory that plaintiff, by initiating the procedure, has submitted herself to jurisdiction of court of responding State for other purposes; hence, when a person initiates an action for support under the Act, respondent cannot counterclaim for divorce or raise issues concerning child custody or visitation privileges or other matters commonly determined in domestic relations cases. Ibach v. Ibach (1979) 123 Ariz. 507, 600 P.2d 1370.

§ 12-1682. Intrastate Application.

This article applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving the documents shall notify the prosecuting attorney of their receipt. The prosecuting

attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1683. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

1. Perfect an appeal to the proper appellate court if the support order was issued by a court of this State.

2. If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1684. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in this article.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1685. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this article.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1686. Registry of Foreign Support Orders.

The clerk of the court shall maintain Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1687. Official To Represent.

If this State is acting either as a rendering or a registering State, the prosecuting attorney upon the request of the court shall represent the obligee in proceedings under §§ 12-1684 to 12-1689, inclusive. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1688. Registration Procedure; Notice.

A. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court three certified copies of the order with all modifications thereof, one copy of the reciprocal enforcement of support law of the State in which the order was made, and a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this article.

B. Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1689. Effect of Registration; Enforcement Procedure.

A. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings, for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

B. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

C. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for the appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1690. Uniformity of Interpretation.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1970, ch. 90, § 3.)

§ 12-1691. Short Title.

This article may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (L. 1970, ch. 90, § 3.)

ARKANSAS
ARK. STAT. ANN. §§ 34-2401 to 34-2442

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ARKANSAS

ARK. STAT. ANN. §§ 34-2401 to 34-2442

§ 34-2401. Purposes.

The purposes of this Act §§ 34-2401 to 34-2442 are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (A. 1969, No. 182, § 1, p. 550.)

Cases

Support decree as evidence.

The purpose of the Uniform Reciprocal Enforcement of Support Act is to facilitate enforcement of support orders rendered in other States by way of an ex parte proceeding whereby a duly rendered valid support decree is prima facie evidence of the obligor's duty, and to that end the uniform law should be liberally construed. Kline v. Kline, 260 Ark. 550, 542 S.W.2d 499 (1976).

Visitation rights.

Where husband and wife were divorced in New York in 1969 and the husband moved to Arkansas, while the wife and two minor children stayed in New York, the husband's visitation rights were outside the jurisdiction of the Arkansas courts under the Uniform Reciprocal Support Act. Scinta v. Markward, 266 Ark. 976, 588 S.W.2d 456 (Ct.App.1979).

Where a divorced wife instituted proceedings to enforce a child support order rendered in a Tennessee divorce action, the Arkansas trial court was without jurisdiction to adjudicate parental visitation rights and was, therefore, in error in making support payments contingent on visitation rights. Kline v. Kline, 260 Ark. 550, 542 S.W.2d 499 (1976).

Service of notice.

No service by this State is contemplated in proceeding to enforce payment of support under Uniform Enforcement of Support Act. Dean v. Dodge, 220 Ark. 853, 250 S.W.2d 731.

§ 34-2402. Definitions.

(a) "COURT" means the chancery court of this State and when the context requires means the court of any other State is as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this Act §§ 34-2401 to 34-2442.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (A. 1969, No. 182, § 2, p. 550.)

§ 34-2403. Remedies in Addition to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (A. 1969, No. 182, § 3, p. 550.)

§ 34-2404. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 34-2407, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (A. 1969, No. 182, § 4, p. 550.)

§ 34-2405. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act §§ 34-2401 to 34-2442 apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (A. 1969, No. 182, § 5, p. 550.)

§ 34-2406. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this Act §§ 34-2401 to 34-2442 or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (A. 1969, No. 182, § 6, p. 550.)

§ 34-2407. Choice of Law.

Duties of support applicable under this Act §§ 34-2401 to 34-2442 are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (A. 1969, No. 182, § 7, p. 550.)

§ 34-2408. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act §§ 34-2401 to 34-2442 as the individual obligee for the purposes of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (A. 1969, No. 182, § 8, p. 550.)

§ 34-2409. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act §§ 34-2401 to 34-2442 including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (A. 1969, No. 18, § 9, p. 550.)

§ 34-2410. Jurisdiction.

(a) Jurisdiction of any proceeding under this Act §§ 34-2401 to 34-2442 is vested in the chancery court. Provided that the county court is vested with jurisdiction of responsive proceedings when in such proceedings the obligor asserts as a defense that he is not the father of the child for whom support is sought or when in such proceedings it is apparent from the record transmitted from the initiating State that the obligor was never married to the mother of the child for whom support is sought.

(b) When any responsive proceeding is commenced in the chancery court and when it appears that the paternity of the child for whom support is or will become an issue, the judge of the chancery court shall forthwith enter an order transferring the case to the county court which shall hear the case and adjudicate all issues therein.

(c) When it is apparent from the record transmitted from the initiating State that the obligor was never married to the mother of the child for whom support is sought, responsive proceedings may be commenced in the county court in the first instance without resort to the chancery court. The county court shall hear the case and adjudicate all issues therein and it shall not be a defense therein that the obligor and the mother of the child for whom support is sought were married.

(d) The county court shall have the same jurisdiction to enter and modify orders of support in cases before it as would the chancery court in cases before the chancery court.

(e) Provided further, that the county court is vested with jurisdiction of initiating proceedings when the mother of the child for whom support is sought and the obligor were never married.

(f) Appeal from proceedings in the county court shall be to the circuit court as provided by law for appeals from county court.

HISTORY: (A. 1969, No. 182, § 10, p. 550, 1979, No. 798, § 1, p. 1736.)

Cases

Avoidance of child support improper.

The arranging of child support on a basis avoiding payments during visitation periods not arranged by agreement of the parties or by order of the court of the State having jurisdiction over visitation rights is improper. Scinta v. Markward, 266 Ark. 976, 588 S.W.2d 456 (Ct.App. 1979).

Necessity for change in circumstances.

Where the evidence showed that a husband and wife were divorced in New York in 1969, that child support was then set at $134 per month, that the husband moved to Arkansas, that on March 24, 1976, the support was changed to $115 per month plus medical and dental insurance or expenses, but with such support not paid from June 1 to August 15 each year if summer visitation right was exercised, by Arkansas chancery court order; that the support was further reduced to $100 per month by order of August 11, 1976, and that all payments for the period June 1 to August 15 were cut off by court order of November 11, 1978, the record disclosed no change in circumstances warranting a reduction in the amount of child support from that set out in the August 11, 1976 order, and there was, therefore, no basis, either in the prior court orders or evidence, for relieving the husband from all summer support payments unconditionally. Scinta v. Markward, 266 Ark. 976, 588 S.W.2d 456 (Ct.App. 1979).

§ 34-2411. Contents and Filing of Complaint for Support; Venue.

(a) The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

(b) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdicition for its enforcement.

HISTORY: (A. 1969, No. 182, § 11, p. 550.)

§ 34-2412. Officials To Represent Obligee.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court or a State Department of Welfare attorney shall represent the obligee in any proceeding under this Act §§ 34-2401 to 34-2442. If the prosecuting attorney neglects or refuses to represent the obligee, the State Director of Public Welfare may undertake the respresentation.

HISTORY: (A. 1969, No. 182, § 12, p. 550.)

§ 34-2413. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (A. 1969, No. 182, § 13, p. 550.)

§ 34-2414. Duty of Initiating Court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the complaint and its certificate and one (1) copy of this Act §§ 34-2401 to 34-2442 to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (A. 1969, No. 182, § 14, p. 550.)

Cases

In general.

Husband who entered appearance in proceeding in this State by wife for support for purpose of filing a petition for continuance of proceeding consented to jurisdiction by court in this State, and initiating court could therefore enter any reasonable judgment for support, and transmit order to responding State. Dean v. Dodge, 220 Ark. 853, 250 S.W.2d 731.

§ 34-2415. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or

other service supplied to the obligor, be paid in whole or in part by the obligor. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (A. 1969, No. 182, § 15, p. 550.)

§ 34-2416. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (A. 1969, No. 182, § 16, p. 550.)

§ 34-2417. State Information Agency.

(a) The State Welfare Department's attorney's office is designated as the State Information Agency under this Act §§ 34-2401 to 34-2442. It shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act §§ 34-2401 to 34-2442 and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the Act §§ 34-2401 to 34-2442 and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act §§ 34-2401 to 34-2442; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the Act §§ 34-2401 to 34-2442 it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, request for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act U.S.C., title 42, § 301 et seq. as amended.

(c) After the deposit of 3 copies of the complaint and certificate and one (1) copy of the Act §§ 34-2401 to 34-2442 of the initiating State with clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is

not prosecuting the case diligently it shall inform the State Director of Public Welfare who may undertake the representation.

HISTORY: (A. 1969, No. 182, § 17, p. 550.)

§ 34-2418. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the complaint certificate and Act §§ 34-2401 to 34-2442 from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the State Director of Public Welfare may undertake the representation.

HISTORY: (A. 1969, No. 182, § 18, p. 550.)

§ 34-2419. Further Duties of the Court and Officials in the Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act §§ 34-2401 to 34-2442 apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (A. 1969, No. 182, § 19, p. 550.)

§ 34-2420. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court.

The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (A. 1969, No. 182, § 20, p. 550.)

§ 34-2421. Immunity From Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for the perjury committed in this testimony.

HISTORY: (A. 1969, No. 182, § 21, p. 550.)

§ 34-2422. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act §§ 34-2401 to 34-2442. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (A. 1969, No. 182, § 22, p. 550.)

§ 34-2423. Rules of Evidence.

In any hearing for the civil enforcement of this Act §§ 34-2401 to 34-2442 the court is governed by the rules of evidence applicable in a civil court action in the chancery court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity as provided in § 34-2427 hereof or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (A. 1969, No. 182, § 23, p. 550.)

Cases

Purpose of Act.

The purpose of the Uniform Reciprocal Enforcement of Support Act is to facilitate enforcement of support orders rendered in other States by way of an ex parte proceeding whereby a duly rendered valid support decree is prima facie evidence of the obligor's duty, and to that end the uniform law should be liberally construed. Kline v. Kline, 260 Ark. 550, 542 S.W.2d 499 (1976).

Visitation rights.

Where divorced wife instituted proceedings to enforce a child support order rendered in a Tennessee divorce action, the Arkansas trial court was without jurisdiction to

adjudicate parental visitation rights and was, therefore, in error in making support payments contingent on visitation rights. Kline v. Kline, 260 Ark. 550, 542 S.W.2d 499 (1976).

§ 34-2424. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act §§ 34-2401 to 34-2442 shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (A. 1969, No. 182, § 24, p. 550.)

§ 34-2424.1. Wage Assignment and Deduction by Court Order in Support Cases.

(a) (1) "STATE OF ARKANSAS" means all agencies, boards, commissions, institutions and other instrumentalities of the State.

(2) "POLITICAL SUBDIVISION THEREOF" means all cities of the first class, cities of the second class, incorporated towns and counties and their agencies, boards, commissions, institutions and other instrumentalities, and school districts.

(b) When a person is ordered by a court of record to pay for the support of his children under the age of eighteen (18), the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, shall order his employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to such person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its order for the support of his or her children under the age of eighteen (18). In determining good cause, the court may take into consideration evidence of the degree of the respondent's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the support order.

(c) Any order for support which orders that the payment be made to the support collection unit, shall order the respondent's employer, former employer, the auditor, comptroller, or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States to deduct from all moneys due or payable to such person, the entitlement to which is based upon remuneration for employment, past or present, such amounts as the court may find to be necessary to comply with its orders for the support of his or her children under the age of eighteen (18), provided, however, that any such support order shall provide that no such deduction shall be made unless and until the support collection unit established by the appropriate

social services district has determined that such person is delinquent in making a specified number of payments determined by the court in such order and a copy of such order and determination has been served upon such person's employer, former employer, the auditor, comptroller or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States; and provided that such person shall be given notice of such determination at least fifteen (15) days prior to service of such order and determination on such employer, former employer, the auditor, comptroller or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States, and if such person pays all arrearages within such fifteen (15) day period, such order and determination shall not be served and no deduction shall be required by reason of such determination, but such payment shall not affect or otherwise limit any determination made as a result of any subsequent delinquencies. Such employer, former employer, the auditor, comptroller or disbursing officer of any pension fund, the State of Arkansas or any political subdivision thereof, or the United States shall deduct the amount as ordered from the moneys due or payable and forward it monthly as directed in the order.

HISTORY: (A. 1979, No. 722, § 1, p. 1606; 1983, No. 594, § 1.)

§ 34-2424.2. Information To Be Provided.

The court shall require such person to provide the court with their (his) full name, address and Social Security number; provided, however, that a Social Security number may be required only where permitted under Federal law.

HISTORY: (A. 1979, No. 722, § 2, p. 1606.)

§ 34-2425. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (A. 1969, No. 182, § 25, p. 550.)

§ 34-2426. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (A. 1969, No. 182, § 26, p. 550.)

§ 34-2427. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (A. 1969, No. 182, § 27, p. 550.)

§ 34-2428. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (A. 1969, No. 182, § 28, p. 550.)

§ 34-2429. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (A. 1969, No. 182, § 29, p. 550.)

§ 34-2430. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this Act §§ 34-2401 to 34-2442 because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiciton for enforcement purposes by the court in the other action or proceeding.

HISTORY: (A. 1969, No. 182, § 30, p. 550.)

§ 34-2431. Application of Payments.

A support order made by a court of this State pursuant to this Act §§ 34-2401 to 34-2442 does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to substantially similar Act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (A. 1969, No. 182, § 31, p. 550.)

Cases

Credit for foreign payments.

The judgment of a California court ordering a former husband, who had fallen behind in his $150 a month alimony payments, to pay only $65 a month into the registry of the California court did not modify the Arkansas support order, and the California payments were therefore properly credited in reduction of the Arkansas obligation. Luckes v. Luckes, 262 Ark. 770, 561 S.W.2d 300 (1978).

§ 34-2432. Effect of Participation in Proceeding.

Participation in any proceeding under this Act §§ 34-2401 to 34-2442 does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (A. 1969, No. 182, § 32, p. 550.)

Cases

Absence of jurisdiction.

Where a divorced wife instituted proceedings to enforce a child support order rendered in a Tennessee divorce action, the Arkansas trial court was without jurisdiction to adjudicate parental visitation rights and was therefore in error in making support payments contigent on visitation rights. Kline v. Kline, 260 Ark. 550, 542 S.W.2d 499 (1976).

§ 34-2433. Intrastate Application.

This Act §§ 34-2401 to 34-2442 applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certificaiton of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have

duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (A. 1969, No. 182, § 33, p. 550.)

§ 34-2434. Appeals.

If the State Director of Public Welfare is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (A. 1969, No. 182, § 34, p. 550.)

§ 34-2435. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 34-2436 to 34-2440.

HISTORY: (A. 1969, No. 182, § 35, p. 550.)

§ 34-2436. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (A. 1969, No. 182, § 36, p. 550.)

§ 34-2437. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (A. 1969, No. 182, § 37, p. 550.)

§ 34-2438. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court or the State Department of Welfare, shall represent the obligee in proceedings §§ 34-2435 to 34-2440 of this Act. If the prosecuting attorney neglects or refuses to represent the obligee, the State Director of Public Welfare may undertake the representation.

HISTORY: (A. 1969, No. 182, § 38, p. 550.)

§ 34-2439. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three (3) certified copies of the order with all modifications thereof,

(2) One (1) copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act §§ 34-2401 to 34-2442.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (A. 1969, No. 182, § 39, p. 550.)

§ 34-2440. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (A. 1969, No. 182, § 40, p. 550.)

§ 34-2441. Uniformity of Interpretation.

The Act §§ 34-2401 to 34-2442 shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (A. 1969, No. 182, § 41, p. 550.)

§ 34-2442. Short Title.

This Act §§ 34-2401 to 34-2442 may be cited as the Revised Uniform Reciprocal Enforcement of Support Act of 1968.

HISTORY: (A. 1969, No. 182, § 42, p. 550.)

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CALIFORNIA

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Chapter 1: General Provisions

§ 1650. Short Title.

This title is known and may be cited as the Revised Uniform Reciprocal Enforcement of Support Act of 1968.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 1.)

Cases

In general.

Uniform Reciprocal Enforcement of Support Act cannot create new support obligations because its sole purpose is to enforce existing duties of support as established in a foreign court; declining to follow Creed v. Schultz, 148 Cal.App.3d 733, 196 Cal.Rptr. 252. In re Marriage of Ryall 201 Cal.Rptr. 504, 154 C.A.3d 743 (App. 5 Dist., 1984).

Jurisdiction.

All foreign judgments are open to collateral attack for lack of jurisdiction. Ventura County, State of Cal. v. Neice 434 N.E.2d 907 (Ind.App. 1982).

Remand.

Determination of noncustodial parent's postwaiver child support obligation by trial court, in action by custodial parent for monthly support and arrearages under Uniform Reciprocal Enforcement of Support Act (this section et seq.), may have been prejudiced by erroneous view that custodian's waiver of decretory child support was inoperative as matter of law; therefore, remand was appropriate for reconsideration of those aspects of its decision. Malekos v. Chloe Ann Yin 655 P.2d 728 (Alaska 1982).

§ 1651. Construction.

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (S. 1953, ch. 1290, § 2.)

Cases

The Uniform Support Law contemplates two distinct causes of action in enforcement of support duties: (1) extradition, and (2) initiation of civil proceedings in the demanding State with the opportunity thereafter given the one owing a duty of support to submit to subsequently assumed jurisdiction of the court in the responding State, and either or both courses of action may be pursued at the election of the demanding State and the person to whom a duty of support is owed. Morgan, In re (1966) 244 C.A.2d 903, 53 Cal.Rptr. 642.

§ 1652. Purpose of Title.

The purposes of this title are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (S. 1953, ch. 1290, § 2.)

Cases

§§ 1650 to 1699 of this Code, codifying Uniform Reciprocal Enforcement of Support Act under which law of State in which alleged obligor is present governs in matters involving child support in interstate context, read in conjunction with pervasive public policy of California to effectuate best interests of children and family unity, compelled conclusion that California had a significant interest in and an expectation of application of § 1670 governing reciprocal duty of support of parents and children in action brought against California resident for support by his adult daughter who was a resident of New York, which did not recognize claimed support obligation. Scott v. Superior Court, 156 C.A.3d 577 (App. 2 Dist., 1984).

The Revised Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc. § 1650 et seq.) was enacted for the purpose of enforcing existing duties of support against persons presently legally liable for such support and cannot create new support obligations. Moffat v. Moffat (1980) 27 C.3d 645, 165 Cal.Rptr. 877, 612 P.2d 967.

The Uniform Support Law contemplates two distinct causes of action in enforcement of support duties: (1) extradition, and (2) initiation of civil proceedings in the demanding State with the opportunity thereafter given the one owing a duty of support to submit to subsequently assumed jurisdiction of the court in the responding State, and either or both courses of action may be pursued at the election of the demanding State and the person to whom a duty of support is owed. Morgan, In re (1966) 244 C.A.2d 903, 53 Cal.Rptr. 642.

The Uniform Reciprocal Enforcement of Support Act provides a means for enforcing the support obligations of obligors located outside the jurisdiction in which dependent spouse or children are present. Mehrstein (1966) 245 C.A.2d 646, 54 Cal.Rptr. 65.

The support law is designed to enable a dependent in one State to secure money for support from a person residing in another State who is legally liable for the support of the dependent and its purposes are to improve and extend by reciprocal legislation the enforcement of duties of support. Clark v. Clark (1966) 246 C.A.2d 619, 54 Cal.Rptr. 875.

§ 1653. Definitions.

As used in this title unless the context requires otherwise:

(a) "COURT" means the superior court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether interlocutory or final or whether incidental to a proceeding for dissolution of marriage, judgment of nullity, or for legal separation, or to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this title.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(j) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiciton in which this or a substantially similar law or procedure is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which is extended to this State.

(k) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(l) "REGISTER" means to file in the Registry of Foreign Support Orders.

(m) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(n) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(o) "RENDERING COURT" means a court which has issued a support order for which registration is sought.

(p) "FOREIGN SUPPORT ORDER" includes a foreign order for the assignment of wages for the satisfaction of a support order.

HISTORY: (S. 1970, ch. 1126, § 3; am.S. 1976, ch. 1166, § 1; S. 1979, ch. 1030, § 5.)

Cases

Pennsylvania judgment which reduced husband's accrued child support arrearages to liquidated sum of money was "support judgment" under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) and hence subject to equitable defenses available under that Act, and was not enforceable under Sister State Money Judgments Act (§ 1710.10). Com. of Pa. to Use of Neuman v. Barbera, 164 C.A.3d 437 (App. 2 Dist., 1985).

In action brought by ex-wife against former husband to have a Pennsylvania support order transferred to California and entered as a money judgment, former husband was entitled to raise as an affirmative defense his contention that ex-wife's action on the Pennsylvania judgment was barred by the California statute of limitations, despite former husband's failure to appear at the Pennsylvania hearing or to appeal from the Pennsylvania judgment. Morris v. Cohen, 149 C.A.3d 507 cert. den. 105 S.Ct. 243, 83 L.Ed.2d 182 (App. 4 Dist., 1983).

In an action by a former wife to establish a sister State judgment pursuant to Code Civ. Proc., § 1710.25, which had awarded her attorney fees and costs arising from a judgment of dissolution in her previous domicile, the trial court erred in filing an order of dismissal of the action and in vacating the judgment based upon the provisions of Code Civ. Proc., § 1710.10, subd. (c) providing that a sister State judgment does not include a support order as defined in Code Civ. Proc., § 1653, subd. (k) (Revised Uniform Reciprocal Enforcement of Support Act of 1968), since that portion of the dissolution decree which awarded attorney fees and costs to the former wife did not constitute "support" as defined in § 1653, subd. (k), but instead was a money judgment, final, nonmodifiable, and for a liquidated sum, although it had "incidents" of a support order. Moreover, in the absence of a proper dismissal order under §1710.10, subd. (c) the trial court also erred in granting the former husband's motion to vacate, since the court's power to vacate the judgment based upon the entry of the sister-State judgment was limited to those grounds set forth in Code Civ. Proc., § 1710.40, subd. (a) (providing that a judgment entered on a sister-State judgment may be vacated on any ground which would be a defense to an action in this State on that sister-State judgment), but the reason assigned by the trial court was not a ground specified in that subdivision. On remand, the trial court should consider the motion to vacate according to the mandate of § 1710.40, subd. (a). Fishman v. Fishman (1981) 117 C.A.3d 815, 173 Cal.Rptr. 59.

The fact that a putative father did not allow the statutory duty under the Revised Reciprocal Enforcement of Support Act to be imposed by way of judgment but chose a compromise agreement with the mother did not prevent a duty of support from arising. The agreement merely permitted the putative father to pay support for children without paternity being admitted or adjudged. And a compromise agreement entered in a sister State between the mother, the petitioner under the Revised Uniform Reciprocal Enforcement of Support Act, and the putative father was the type of duty contemplated under Code Civ. Proc., § 1653, subd. (b), which is part of California's version of the Act and which defines "duty of support" as "a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether, interlocutory or final." Banks v. McMorris (1975) 47 C.A.3d 723, 121 Cal.Rptr. 185.

Language of the Ohio version of the Revised Uniform Reciprocal Enforcement of Suport Act is substantially similar to California provisions authorizing a guardian ad litem of a minor with the approval of the court to compromise the same (Code Civ. Proc., § 372), so as to permit a California court to enforce the bastardy statutes of Ohio. Id.

A prior order of support is unaffected by an ex parte divorce since, under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., §§ 1650-1692, 9 UCLA) the duty of support is defined to include any duty of support imposed or imposable by law, or any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise, and, the term support is used in a general sense and includes alimony or child support after divorce. Mehrstein v. Mehrstein (1966) 245 C.A.2d 646, 54 Cal.Rptr. 65.

Term "prosecuting attorney" as used in portion of Uniform Reciprocal Enforcement of Support Act providing that before Governor may extradite person for his failure to support dependents in demanding State he shall call on any prosecuting attorney to investigate demand for extradition does not include prosecuting attorney of demanding State, but means District Attorney of county in which obligor is alleged to be present. Hart, In re (1964) 229 C.A.2d 455, 40 Cal.Rptr. 420.

Where action was instituted against superior court, certain judges, sheriff, District Attorney, county clerk, probation officer, court trustee, county auditor, and county treasurer based on alleged deprivation of civil rights and on conspiracy to deprive plaintiff of such rights, because certain of defendants prosecuted or judicially acted on claim made in State courts, under Uniform Reciprocal Enforcement of Support Act, such action did not lie; for acts of judicial defendants complained of were judicial acts and acts of "prosecuting defendants" complained of were quasi-judicial acts. Harmon v. Superior Court (1964) 329 F.2d 154.

Under the definitions of "obligor" as "person owing a duty of support" and "obligee" as "person to whom a duty of support is owed," "obligor" is defendant in any support proceeding, which must be commenced by "obligee" in "initiating State" with a determination there that court of another State may obtain jurisdiciton of defendant or his property, and then on certification to the "responding State," the court there assumes jurisdiction, sets matter for hearing and makes appropriate order. Floyd, In re (1954) 43 C.2d 379, 273 P.2d 820.

Former subd 6, defining "duty of support," was not unconstitutional for being vague and indefinite when applied to case in which divorced wife sought support for child of parties and showed that divorce was obtained in Washington, D.C., at which time defendant was in Guam and knew of pendency of action but did not contest it, and that child had lived with divorced wife for some years and was living with her at time of divorce. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

That part of an Ohio court's order which awarded a former wife a judgment against her former husband for delinquent alimony in the sum of $6,025, "for which execution may issue," was a sister-State judgment within the meaning of Code Civ. Proc., 1710.10, subd. (c), rather than a support order within the meaning of Code Civ. Proc., § 1653, subd (k), where the judgment resulted from the wife's motion to reduce to a money judgment the husband's aggregate arrearages in support payments due under the parties' divorce decree. Thus, the judgment was entitled to registration under the sister State and Foreign Money Judgments Act (Code Civ. Proc., §§ 1710.10-1710.65), and having been so registered was entitled to enforcement in this State. Moreover, enforcement was required under the full faith and credit provision of U.S. Const. art. IV, § 1, Liebow v. Superior Court (1981) 120 C.A.3d 573, 175 Cal.Rptr. 26.

In Code Civ. Proc., § 1653, subd. (k), defining a support order as "any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in

which it is entered," the word "or" between "temporary or final" and "subject to modification, revocation, or remission" must be read as "and" to give meaning and operative effect to those two expressions. To construe the two groups disjunctively would yield the illogical result of causing any judgment to fall within the definition because all judgments are either temporary or final. In construing a statute the courts may consider the consequences that might follow from a particular interpretation. They will construe a statute with a view to promoting rather that to defeating its general purpose and the policy behind it. Id.

§ 1654. Additional Remedies.

The remedies provided in this title are in addition to and not in substitution for any other remedies.

HISTORY: (S. 1953, ch. 1290, § 2.)

Cases

Unless plaintiff elects to proceed under this Act, defendant's failure to pay instalments as they come due will force plaintiff constantly to relitigate defendant's obligation to support. Worthley v. Worthley (1955) 44 C.2d 465, 283 P.2d 19.

Divorced mother, by bringing action in Colorado, under Uniform Reciprocal Act of that State against father for support of children of parties does not elect to rely on criminal law of Colorado making it a felony for father to fail to support children under sixteen, but seeks benefit of reciprocal laws as adopted by both Colorado and California. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

§ 1655. Duty of Support Regardless of Presence or Residence in State.

Duties of support arising under the law of this State, when applicable under § 1670, bind the obligor, present in this State, regardless of the presence of residence of the obligee.

HISTORY: (S. 1953, ch. 1290, § 2.)

Cases

§§ 1650 to 1699 of this Code, codifying Uniform Reciprocal Enforcement of Support Act under which law of State in which alleged obligor is present governs in matters involving child support in interstate context, read in conjunction with pervasive public policy of California to effectuate best interests of children and family unity, compelled conclusion that California had a significant interest in and an expectation of application of § 1670 governing reciprocal duty of support of parents and children in action brought against California resident of New York, which did not recognize claimed support obligation. Scott v. Superior Court, 156 C.A.3d 577 (App. 2 Dist., 1984).

Foreign-created alimony and support obligations are enforceable in this State, and, in an action to enforce a modifiable support obligation, either party may tender and litigate any plea for modification that could be presented to the courts of the State where the alimony or support decree was originally rendered, but, in order to exercise jurisdiction

over the subject matter, the court must secure personal jurisdiction over the defendant. Schoch v. Superior Court (1970) 11 C.A.3d 1200. 90 Cal.Rptr. 365.

In action initiated in Virginia under Reciprocal Enforcement Support Act of that State to recover sums for child's support from divorced husband living in California, corresponding California act does not deny husband equal protection of laws of this State by subjecting him to laws of Virginia and purporting to allow entry of order for support of nonresident child whose custody is not subject to jurisdiction of the court. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

§ 1655.5. Privately Retained Counsel.

Notwithstanding any other provision of law, privately retained counsel may represent an obligee in any proceeding under this title.

§ 1656. Severability of Provisions.

In any provision of this title or the application thereof to any person or circumstance in held invalid, the invalidity does not affect other provisions or applications of the title which can be given effect without the invalid provision or application, and to this end the provisions of this title are severable.

HISTORY: (S. 1970, ch. 1126, § 4.)

§§ 1658, 1659. Repealed 1931. See Probate Code.

Chapter 2: Criminal Enforcement

§ 1660. Demands and Surrenders; Extradition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person in that State who is charged criminally in this State with failing to provide for the support of any person, or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in another State with failing to provide for the support of any person. Provisions for extradition or criminals not inconsistent with this title apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this section need not State or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

Cases

In a proceeding under the Uniform Reciprocal Enforcement of Support Act, a demand for extradition is sufficient in form if it is in writing and, insofar as not consistent with Code Civ. Proc., § 1660 (part of the foregoing Act), conforms with the requirements of

Pen Code, § 1548.2 (part of the Uniform Criminal Extradition Act) as to accompanying documents, charges made and authentication. Morgan, In re (1966) 244 C.A.2d 903, 53 Cal.Rptr. 642.

Pen Code, §§ 1548.2, 1549.1 (part of the Uniform Criminal Extradition Act) and Code of Civ. Proc., §§ 1660, 1661 (part of the Uniform Reciprocal Enforcement of Support Act) are in pari materia and should be construed with reference to each other. Id.

Extradition is not a matter of mere comity, subject to the pleasure of each State, but an absolute duty and right. Id.

While State laws cannot place limitations upon extradition required by Federal law, the State Legislature may permit the Governor to surrender a fugitive on terms less exacting than those imposed by the act of Congress, and has done so, by voluntary and cooperative action between other States, in enacting Pen Code, § 1549.1 (part of the Uniform Criminal Extradition Act) and Code Civ. Proc., § 1660 (part of the Uniform Reciprocal Enforcement of Support Act). Id.

In a proceeding under the Uniform Reciprocal Enforcement of Support Act instituted in another State, where the formal requirements of a demand for extradition were fully met (Pen Code, § 1548.2 as limited by Code Civ. Proc., § 1660), it was immaterial that the commission of acts in this State intentionally resulting in crime in the other State was alleged, not in the information as provided in Pen Code, § 1549.1, but in the accompanying affidavit of the complaining witness. Id.

Protection from unjustified extradition does not lie in reading purely technical requirements into the extradition laws, but in the sound judgment of the respective Governors charged with the administration of those laws, whose judgment is entitled to great weight. Id.

In an extradition proceeding, the recitation in the warrant of the Governor of another State that he was acting under the Constitution and laws of the United States, while unnecessary, did not vitiate the demand for extradition where this State had at all times referred to and treated the warrant of requisition as one under the Uniform Reciprocal Enforcement of Support Act, adopted by both States. Id.

In an extradition proceeding, the Governor may take notice of the laws of the demanding State without proof thereof being submitted to him. Id.

In an extradition proceeding instituted by another State under the Uniform Reciprocal Enforcement of Support Act, habeas corpus was denied where the documents, papers and report considered by the Governor substantially supported a conclusion that the statutory regulations for extradition under Pen Code, § 1549.1 or Code Civ. Proc., § 1660, had been complied with the warrant of extradition and the warrant of rendition, and where the warrant of rendition for the arrest and delivery of the obligor was issued within the provisions of the laws of this State. Id.

Where, pursuant to Uniform Reciprocal Enforcement of Support Act person is sought to be extradited, for failure to support dependents in another State, who was not in demanding State at time of commission of crime and had not fled therefrom, he is not fugitive within meaning of U.S. Const. art. IV. Hart, In re (1964) 229 C.A.2d 455, 40 Cal.Rptr. 420.

In proceeding pursuant to Uniform Reciprocal Enforcement of Support Act, to extradite person not fugitive within meaning of U.S. Const. art. IV for his failure to support dependents in demanding State, provision of act that before extradition Governor shall call on any prosecutor to investigate demand for extradition and report whether civil action for support was brought or would be effective creates mandatory condition precedent to extradition, so as to first give defendant chance to comply with civil provisions of act. Id.

Section in effect supplements with reference to person sought under Uniform Reciprocal Enforcement of Support Act more general provisions of Pen Code § 1549.1, that authorize Governor to surrender persons committing act in this State, or in third State, that intentionally results in crime in demanding State, though accused was not therein at time of commission of crime, and has not fled therefrom. Id.

Colorado Uniform Reciprocal Enforcement of Support Act is substantially identical with this Act, except that it does not contain criminal enforcement provisions found in §§ 1660 and 1661 of this Act. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

This enactment contemplates two distinct courses of action in enforcement of support duties: (1) extradition and (2) initiation of civil proceedings in demanding State, with opportunity thereafter given to obligor to submit to subsequently assumed jurisdiction of court in responding State; while other or both courses of action may be pursued, the election lies wholly with demanding State and obligee and obligor may not independently institute action in responding State for purpose of defeating extradition process. Floyd, In re (1954) 43 C.2d 379, 273 P.2d 820.

§ 1661. Proceedings; Investigation; Denial of Demand.

(a) Before making the demand on the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of any person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee brought an action for support under this title, or that the bringing of an action would be of no avail.

(b) If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether any action for support has been brought or would be effective. If it appears to the Governor that an action for support would be effective but has not been brought, he may delay honoring the demand for a reasonable time to permit the bringing of an action for support.

(c) If an action for support has been brought, and the person demanded has prevailed in that action, the Governor may decline to honor the demand. If the obligee prevailed therein and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (S. 1959, ch. 710, § 3; am.S. 1965, ch. 853, § 1; S. 1970, ch. 1126, § 6.)

Cases

Mother, custodial parent under decree of dissolution, was obligated to pay child support under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) where father retained custody after a summer visit, especially where mother took no legal action against father, but rather seemed to consent to his custody of children. Carr v. Marshman, 147 C.A.3d 1117 (App. 1 Dist., 1983).

Pen Code, §§ 1548.2, 1549.1 (part of the Uniform Criminal Extradition Act) and Code of Civ. Proc., §§ 1660, 1661 (part of the Uniform Reciprocal Enforcement of Support Act) are in pari materia and should be construed with reference to each other. Morgan, In re (1966) 244 C.A.2d 903, 53 Cal.Rptr. 642.

In determining whether a sufficient showing has been made to warrant an extradition demanded by another State, the Governor of this State, under Pen Code, § 1548.3 and Code Civ. Proc., § 1661, subd (e), may consider evidence outside the papers sent with the requisition. Id.

Protection from unjustified extradition does not lie in reading purely technical requirements into the extradition laws, but in the sound judgement of the respective Governors charged with the administration of those laws, whose judgment is entitled to great weight. Id.

Statutory requirement that, before Governor may extradite person for crime of nonsupport of dependents in demanding State, he must call on any prosecutor to investigate demand for extradition does not purport to impose any limitation on Governor's ultimate discretion; all that is required is that Governor be adequately informed by responsible public official of facts and circumstances surrounding prospective defendant's failure to support his dependents so that Governor may be able to exercise his discretion intelligently. Hart, In re (1964) 229 C.A.2d 455, 40 Cal.Rptr. 420.

Term "prosecuting attorney" as used in portion of Uniform Reciprocal Enforcement of Support Act providing that before Governor may extradite person for his failure to support dependents in demanding State he shall call on any prosecuting attorney to investigate demand for extradition does not include prosecuting attorney of demanding State, but means District Attorney of county in which obligor is alleged to be present. Id.

Statutory language that directs Governor to "call upon" and not merely to "request" an investigation of demand for extradition of person for failure to support dependents in demanding State, pursuant to Uniform Reciprocal Enforcement of Support Act, imports obligation on part of prosecutor to respond, and is duty which legislature has power to impose only on officials of this State. Id.

Attorney General's approval "as to form" of demand for extradition of person for failure to support dependents in demanding State, pursuant to Uniform Reciprocal Enforcement of Support Act, does not satisfy requirement of act that before extradition Governor must call on any prosecuting attorney to investigate demand. Attorney General is not prosecuting attorney, and such approval "as to form" is not investigation within meaning of act. Id.

In proceeding pursuant to Uniform Reciprocal Enforcement of Support Act to extradite person not fugitive within meaning of U.S. Const. art. IV for his failure to support dependents in demanding State, provision of act that before extradition Governor shall call on any prosecutor to investigate demand for extradition and report whether civil

action for support was brought or would be effective creates mandatory condition precedent to extradition, so as to first give defendant chance to comply with civil provisions of act. Id.

Colorado Uniform Reciprocal Enforcement of Support Act is substantially identical with this Act, except that it does not contain criminal enforcement provisions found in §§ 1660 and 1661 of this Act. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

This Act contemplates two distinct courses of action in enforcement of support duties: (1) extradition and (2) initiation of civil proceedings in demanding State, with opportunity thereafter given to obligor to submit to subsequently assumed jurisdiction of court in respondng State; while either or both courses of action may be pursued, the election lies wholly with demanding State and obligee and obligor may not independently institute action in responding State for purpose of defeating extradition process. Floyd, In re (1954) 43 C.2d 379, 273 P.2d 820.

This section does not purport to interfere with what may be done by another State and, in the absence of a similar reciprocal provision adopted by another State, it does not provide for any relief from extradition in connection with desertion and nonsupport orders entered in such other State. Susman, In re (1953) 116 C.A.2d 698, 254 P.2d 161.

In view of the fact that the State of New York makes no statutory provision for criminal enforcement of duty of support, and has no provision similar to § 1660 and this section, a person indicted for abandonment of children without means of support under New York law, who has complied with a California court order to pay a designated sum per week for such children's support, may not successfully claim that under this section he is relieved of extradition, there being no reciprocal legislation in this respect. Id.

§§ 1662-1669. Repealed 1931. See Probate Code.

Chapter 3: Civil Enforcement

Cases

Fact that there is no reciprocal legislation with respect to provisions for criminal enforcement of duty to provide for support of children does not destroy effect of reciprocal provisions in laws of initiating State and responding State with respect to civil enforcement of such duty. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

§ 1670. Enforceable Duties of Support; Presumption of Presence in Responding State.

Duties of support applicable under this title are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 7.)

Cases

In general.

Code Civ. Proc., § 1670, a part of the Revised Uniform Reciprocal Enforcement of Support Act of 1968 as amended, which provides that the duties of support applicable are those imposed under the laws of the State where the obligor has been present during the period for which suppport is sought, is not the exclusive way of determining a duty of support. The act is an addition to the remedies available to the obligee to obtain support wherever the obligor may be found. A person who utilizes provisions of the act cannot be deemed to waive any remedy available to enforce the constitutional full-faith-and-credit provision. Re Marriage of Taylor (1981, 2d Dist.) 122 Cal.App. 3d 209, 175 Cal.Rptr. 716.

In an action by a former wife under the Revised Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1650 et seq.), to compel the payment of child support pursuant to a dissolution of marriage decree, the trial court committed reversible error in failing to give conclusive effect to a prevailing contempt order and ruling that the former husband had a duty of support despite the former wife's willful denial of visitation rights, where the contempt order was made by a court having continuous jurisdiciton in the dissolution proceedings and was for violation of an order rendered in those proceedings, and where jurisdiciton over the parties in the dissolution proceedings was not in dispute. Because the trial court had jurisdiction over the subject matter and the parties, the order was not subject to collateral attack regardless of whether it was in excess of the court's jurisdiction as being in violation of Code Civ. Proc., § 1218, providing that the enforcement of child support orders not barred by contumacious behavior of a party to a dissolution proceeding. Moreover, the former husband was entitled to rely on the prior order excusing him from support payments, since the former wife had a full opportunity to contest the propriety of the order at the time of the contempt hearing, or, in the alternative, to seek review by an extraordinary writ, and her failure to seek normal available remedies could be viewed as encouraging the former husband to rely on the validity of the order. Moffat v. Moffat (1980) 27 C.3d 645, 165 Cal.Rptr. 877, 612 P.2d 967.

Where father on his appeal from order in proceeding by nonresident mother under this Act directing him to pay certain monthly sum for child's support stipulated that payments falling due pending appeal should be deposited twice monthly by his counsel and sent to probation officer's office, to go to mother in one lump sum if appeal was determined favorably to her, he was bound by his stipulation. Harmon v. Harmon (1960) 184 C.A.2d 245, 7 Cal.Rptr. 279, app. dismd. cert. den. 366 U.S. 270, 6 L.Ed.2d 382, 81 S.Ct. 1100.

Enforcement of duties of support under this statute is not limited to cases where obligor flees jurisdiction of initiating State. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274; Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

Divorced father is not relieved form duty of support under this statute because of divorce decree with its order for custody of children. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

Father could not rely on claim of desertion by wife as destroying enforcement of his duty to support under this statute, where wife obtained divorce on ground of desertion and he admitted he knew about decree before it became final and relied on it when he remarried. Id.

Enforcement of duties of support under this statute is based on failure to provide needed support for dependents. Id.

This section is procedural, and relates only to current duty to support. Id.

This statute applies prospectively and not retroactively. Id.

This statute was not enacted to make failure to support one's children a crime, and does not create new defenses, but it is procedural, and relates only to current duty of support. Id.

Constitutionality.

In action initiated in Virginia under Reciprocal Enforcement of Support Act of that State to recover sums for child's support from divorced husband living in California, corresponding California act does not deny husband equal protection of laws of this State by subjecting him to laws of Virginia and purporting to allow entry of order for support of nonresident child whose custody is not subject to jurisdiciton of the court. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

This statute does not violate constitutional prohibition against ex post facto laws. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

Enforcement of foreign support rights.

In a proceeding to compute arrearage of a former husband's child support obligation, the judgment of a Missouri court duly registered in California pursuant to Code Civ. Proc., § 1698.3, ordering the husband to pay child support for minor children was properly given full faith and credit and the arrearage calculated to include the support of two children who had reached age 18 and were under age 21. Under Missouri law, arrearage under a judgment for the support of minors which has accrued after they are 18 or over but before the age of 21, is unmodifiable by the courts of that State, and the court-ordered support of the minor children was therefore required to be paid until age 21 or emancipation under the common law rule. Re Marriage of Taylor (1981, 2d.Dist.) 122 Cal.App. 3d 209, 175 Cal.Rptr. 716.

A mother awarded custody of her minor child in a Georgia divorce and now resident in New York was entitled under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1670 et seq.) to apply to the California courts for fair and reasonable child support from the father, where, although the Georgia decree had incorporated a once-for-all lump-sum settlement for child support, as permitted in Georgia, Georgia's Uniform Act at that time provided that the duties of support were those of the State where the obligor was present during the period for which support was sought, and where, although the father's present domicile was not indicated by the record, he had apparently left Georgia for good and made California his home and place of business. Elkind v Byck (1968) 68 C.2d 453, 67 Cal.Rptr. 404, 439 P.2d 316.

A wife who has been awarded child support by a California court may generally collect all back payments (Civ. Code, § 137.1), and the same treatment is extended by California courts to foreign support judgments even though they may be modifiable retrospectively and prospectively. Farmers & Merchants Trust Co. v. Madeira (1968) 261 C.A.2d 503, 68 Cal.Rptr. 184.

Code Civ. Proc., § 1670 provides that enforceable support obligations are those "imposed or imposable under the laws of any State where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee," and where the laws of both California and another State imposed and an obligation of support on the husband such obligation was properly enforced by the California court in its original order. Mehrstein v. Mehrstein (1966) 245 C.A.2d 646, 54 Cal.Rptr. 65.

A wife's participation in reciprocal divorce proceedings did not subject her to the general jurisdiction of California courts so as to subject her to a default divorce decree in an action brought by the husband, where the wife never lived in California, was not personally served with process in California, and did not enter a personal appearance in the divorce action, and though the divorce decree could dissolve the wife's marital status it could not affect her existing right to support. Id.

In an action for support under the Uniform Reciprocal Enforcement of Support Act where the responding jurisdiciton ordered defendant to make support payments to fulfill his obligation of support and where there is no basis to upset the findings of such court the mere fact that the court made its order when there was a decree outstanding which recited that defendant was entitled to the custody of the children, without more, is not a sufficient ground for reversing the support order. Clark v. Clark (1966) 246 C.A.2d 619, 54 Cal.Rptr. 875.

In proceeding by nonresident mother under this Act for support of child, father's contention that finding that he was resident of Los Angeles County did not support conclusion that he must support his child in unfit surroundings in another State was based on false premise where there was no showing that child was in unfit surroundings in another State, and where court, in addition to finding that father resided in county, found that he owed duty to support child and he had ability to pay monthly sum awarded for its support. Harmon v. Harmon (1960) 184 C.A.2d 245, 7 Cal.Rptr. 279, app. dismd. cert. den. 366 US 270, 6 L.Ed.2d 382, 81 S.Ct. 1100.

Evidence supported finding that father owed duty to support minor where it showed that father took minor from parties' home in Maryland to his mother's home in Michigan, that he sent to minor's mother telling her to bring child's things which she did, that two days later mother took child back to Virginia and that parties never saw each other again, father going to Guam, then Hawaii, and finally to California, mother remaining in Virginia and divorcing father while he was in Guam. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

Notwithstanding that divorce decree of sister-State provides that it retains jurisdiciton for further order pertaining to custody and support of minor child, California court has jurisdiction of divorced wife's action to compel former husband to pay reasonable amount for support, where all that she seeks is enforcement of right given her in agreement approved by decree to prosecute legal remedies open to her on parties' failure to agree on amount of support to be paid on child's reaching maturity. Engle v. Superior Court (1956) 140 C.A.2d 71, 294 P.2d 1026.

Foreign judgment for alimony or the like cannot be enforced by contempt proceeding. Lubin v. Lubin (1956) 144 C.A.2d 781, 302 P.2d 49.

Issue of modification of foreign maintenance or support decree need not, as matter of practical convenience, be tried in courts of State where such decree was originally rendered. Worthley v. Worthley (1955) 44 C.2d 465, 283 P.2d 19.

California courts must recognize and enforce foreign alimony and support decrees whether modifiable or not. Id.

Where decree of Ohio court awarding the wife alimony without divorce was made by court having jurisdiction over person of husband and such order was not terminated by divorce granted husband by Florida court on substituted service, California superior court has jurisdiction, based on personal service of process on husband, to make reasonable order for support of former wife in proceeding under this title. Gohdes v. Gohdes (1955) 134 C.A.2d 819, 286 P.2d 539.

Election of support rights of particular jurisdiction.

§§ 1650 to 1699 of this Code, codifying Uniform Reciprocal Enforcement of Support Act under which law of State in which alleged obligor is present governs in matters involving child support in interstate context, read in conjunction with pervasive public policy of California to effectuate best interests of children and family unity, compelled conclusion that California had a significant interest in and an expectation of application of this section in action brought against California resident for support by his adult daughter who was a resident of New York, which did not recognize claimed support obligation. Scott v. Superior Court, 156 C.A.3d 577 (App. 2 Dist., 1984).

Duties of support under this section are governed by laws of any State where obligor was present for period during which support is sought. Gingold v. Gingold, 161 C.A.3d 1177 (App.1 Dist., 1984).

Where neither party cited law of California, it would be presumed to be same as law in Indiana. Ventura County, State of Cal. v. Neice, 434 N.E.2d 907 (Ind.App., 1982).

Bringing of action to enforce duties under this statute in one State does not constitute election to rely on criminal law of such State, but entitles person bringing such action to benefit of reciprocal laws as adopted by both States. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

It is only when there is a difference in duty of support provided by respective States that the initiating papers are to show either that obligor was in foreign State during period for which support is sought or that obligee was there when failure to support commenced, and only obligee has right to elect between the States. Smith v. Smith (1954) 125 C.A.2d 154, 270 P.2d 613.

§ 1671. Right of Reimbursement.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate an action under this title as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 8.)

Cases

When a parent not entitled to custody takes a child away from the custodial parent and undertakes to provide support and maintenance to the child on a voluntary basis without an agreement for compensation, the custodial parent's duty to support the child

under Civ. Code, § 196, terminates, and the noncustodial parent becomes soley liable for the support of the child. Since in such a situation, the child may look only to the noncustodial parent to provide care and support, a State occupying the same legal posture as the child by virtue of Code Civ. Proc., § 1671, which provides for actions for reimbursement of support furnished, may, and indeed should, turn to the noncustodial parent in order to seek reimbursement for welfare funds spent for support. Richards v. Gibson (1979) 90 C.A.3d 877, 153 Cal.Rptr. 561.

In an action under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1650 et seq.), the trial court erred in ordering a father to reimburse the State of Utah for welfare funds expended for the support of his children in that State, where the father, who resided in California, had been granted custody of the children by a California decree before such welfare funds were expended, where the welfare payments became necessary solely because the mother of the children, in violation of the California decree, kept them illegally with her in Utah without being able to provide them with the necessities of life, where the father acted with the utmost legal diligence in attempting to retrieve the children from their mother and bring them back to California so as to provide them food, shelter, and parental care in full compliance with the court decree, and where there was no showing that the father knew of welfare payments given to the mother. Id.

§ 1672. Enforcement by Action; Contempt; Defenses Based on Relationship.

All duties of support, including the duty to pay arrearages, are enforceable by an action under this title, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1959, ch. 710, § 4; S. 1970, ch. 1126, § 9.)

Cases

Since trial court lacked personal jurisdiction over nonresident mother who filed proceeding under Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) the trial court had no equitable jurisdiction to specify the terms of "reasonable visitation" ordered in the Florida dissolution decree. In re Marriage of Ryall, 154 C.A.3d 743 (App. 5 Dist., 1984).

Wife who has secured separate maintenance judgment in Illinois (her domicile) after rendition of valid divorce decree for husband in Nevada is not precluded from enforcing support in California (husband's present domicile), where husband did not invoke Nevada divorce decree in Illinois proceeding. Lewis v. Lewis (1957) 49 C.2d 389, 317 P.2d 987.

Effect on wife's right to support of foreign ex parte divorce secured by husband is determined by reference to law of state of wife's domicile at time of divorce. Id.

Where divorce decree of sister-State incorporating property settlement agreement requires husband to pay certain sum in lieu of all payments of alimony and support money and by way of support and maintenance of parties' children, but does not segregate amounts attributable to wife and to children, wife's contractual right to receive her proportional share of monthly payment under such decree, after children reach maturity, is not subject to modification by Supreme Court of California or by any other court. Hopkins v. Hopkins (1956) 46 C.2d 313, 294 P.2d 1.

Divorce decree of sister-State incorporating property settlement agreement requiring husband to pay certain sum in lieu of all payments of alimony and support money and by way of support and maintenance of parties' children, but not segregating amounts attributable to wife and to children, is not, after children reach maturity so uncertain as to be incapable of enforcement in California, since courts of this State can, without first resubmitting decree to court of its origin for modification, determine proportion of total support obligation attributable to wife. Id.

Where both parties are before California court, it may not properly refuse to hear plaintiff's prayer for enforcement of modifiable sister-State decree for separate maintenance and defendant's plea for modification of his obligations thereunder; if accrued installments are modified retroactively, judgment for liquidated sum entered after such modification will be final; and if installments are modified prospectively, issues thus determined will be res judicata so long as circumstances of parties remain unchanged. Worthley v. Worthley (1955) 44 C.2d 465, 283 P.2d 19.

This section does not require that laws of initiating State and responding State be identical with respect to age limitation. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

No parent has a "fundamental right" not to be called on to support his offspring. Starr v. Starr (1953) 121 C.A.2d 633, 263 P.2d 675.

§ 1672.5. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the superior court.

HISTORY: (S. 1959, ch. 710, § 5.)

Cases

Lack of jurisdiction over nonresident obligor was not a proper basis upon which to vacate registration of foreign support order under the Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.). Gingold v. Gingold, 161 C.A.3d 1177 (App. 1 Dist., 1984).

In proceeding under this Act, initiated in New York against California defendant, to enforce support of minor child, California courts had jurisdiction to ascertain and enforce adequate support for child; it is sufficient for jurisdiction that New York is place of residence of child, and that California is place of residence of father. Whittlesey v. Bellah (1955) 130 C.A.2d 182, 278 P.2d 511, cert. den. 350 U.S. 821, 100 L.Ed. 734, 76 S.Ct. 47.

In proceeding under this Act, initiated in New York against California defendant, to enforce support of minor child, California court has jurisdiction to hear and determine matter despite fact that defendant had no notice of New York proceeding until he was served in California proceeding. Id.

Divorced parents cannot, by contract, free father from legal responsibility for support of their children to extent of depriving courts of jurisdiction subsequently to order making of payments of such support. Smith v. Smith (1955) 131 C.A.2d 764, 281 P.2d 274.

Where decree of Ohio court awarding wife alimony without divorce was made by court having jurisdiction over person of husband and such order was not terminated by divorce granted by Florida court on substituted service, California superior court has jurisdiction, based on personal service of process on husband, to make reasonable order for support of former wife in proceeding under the Act. Gohdes V. Gohdes (1955) 134 C.A.2d 819, 286 P.2d 539.

§ 1673. Complaint.

(a) The complaint or claim shall be verified and shall State the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. Verification shall be in accordance with the requirements of the initiating State. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending a proceeding for dissolution of the marriage or for legal separation, or another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody, between the same parties, or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

(c) When the obligee removes his or her residence from the county in which the proceeding was initiated to another county in the State, the court may transfer the proceeding to the new county of residence. The clerk of the court in which the proceeding was initiated shall forward certified copies of all documents necessary for continued prosecution of the proceeding to the county where the proceeding was transferred. The clerk of the court to which the proceeding has been transferred shall inform the court of the responding State that the case has been transferred, and that payment should be made through the appropriate agency of the transferee county. Transfer procedures under this section may be initiated by the obligee, or by the court, prosecuting official or clerk of either county or of the responding State.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 10; S. 1979, ch. 1030, § 7.)

Cases

In proceeding under this Act, initiating papers are sufficient to constitute cause of action and to support proceedings and order for support, although petition is not in name of child, where it alleges that petitioner is defendant's wife, whereas she had divorced him, and does not show amount needed for support, as proceeding can be brought by person having legal custody of child, and evidence is presented at hearing in this State of mother's income, expenses and needs of child, and income and expenses of defendant. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

There is no requirement that as condition for bringing proceeding under Reciprocal Enforcement of Support Act there be showing that obligor has absconded. Id.

Only where there is difference in duty of support provided by respective States should initiating papers show either that obligor was in foreign State during period for which support is sought or that obligee was there when failure to support commenced and only obligee has right to elect between States. Smith v. Smith (1954) 125 C.A.2d 154, 270 P.2d 613.

§ 1674. Representation of Obligee by Prosecuting Attorney.

If this State is acting as an initiating State, the prosecuting attorney, upon the request of the court or the obligee, shall represent the obligee in any proceeding under this title. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 11; S. 1976, ch. 1167, § 1.)

Cases

§ 1675. Complaint of Minor.

A complaint on behalf of a minor obligee may be executed and filed by a peron having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 12.)

Cases

Under this section, mother may be petitioner in proceedings under this Act for orders for support of minor child who is not party to proceeding. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

Proceeding under this Act for order for support of minor can be brought by minor's mother, although father argues that since divorce decree was granted in ex parte proceeding, when he was not within jurisdiction of court granting it, mother did not have legal custody of minor, where child for whose support order is sought was residing with her mother when decree was granted and had resided with her since that time. Id.

Initiating papers were sufficient to support cause of action and to support proceedings and order for support, though petition was not in name of child, where it alleged that petitioner was defendant's wife, whereas she had divorced him, and it did not show amount needed for support. Id.

Under this enactment defining "obligor" as "person owing a duty of support" and "obligee" as "person to whom a duty of support is owed," obligor is defendant in any support proceeding, which must be commenced by "obligee" in "initiating State" with a determination there that court of another State may obtain jurisdiction of defendant or his property, and then on certification to the "responding State," the court there assumes jurisdiction, sets matter for hearing and makes appropriate order. Floyd, In re (1954) 43 C.2d 379, 273 P.2d 820.

§ 1676. Certification and Transmission of Copies of Complaint.

If the initiating court or agency finds that the complaint or claim sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the complaint or claim and its certificate and one copy of this title or of the declaration or reciprocity made pursuant to § 1693 to be sent to the responding State. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State information agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 13; S. 1979, ch. 1030, § 8.)

Cases

Under this enactment defining "obligor" as "person owing a duty of support" and "obligee" as "person to whom a duty of support is owed," "obligor" is defendant in any support proceeding, which must be commenced by "obligee" in "initiating State" with a determination there that court of another State may obtain jurisdiction of defendant or his property, and then on certification to the "responding State," the court there assumes jurisdiction, sets matter for hearing and makes appropriate order. Floyd, In re (1954) 43 C.2d 379, 273 P.2d 820.

§ 1677. Fees and Costs.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1959, ch. 710 § 6; S. 1970, ch. 1126, § 4.)

§ 1678. Detention of Defendant Suspected of Fleeing.

If the court of this State believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor or by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process.

Thereupon it may release his upon his own recognizance or upon his giving bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 15.)

§ 1679. Designation of Attorney General as State Information Agency; Duties.

(a) The Attorney General is hereby designated as the State Information Agency under this title. He shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this title and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the Legislature, the Attorney General shall distribute copies of any amendments to this title and a statement of their effective dates to all other State Information Agencies.

(2) Maintain a register of such lists of courts received from other States and to transmit copies thereof promptly to every court in this State having jurisdiction under this title.

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the Act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 16.)

§ 1680. Duty of Prosecuting Officer.

(a) After the responding court receives copies of the complaint, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action. Claims received by this State from an initiating agency shall be forwarded to the District Attorney for preparation and filing of appropriate pleadings.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary to enable the court to obtain jurisdiction over the obligor or his property in accordance with law. He shall, upon being notified that the cause has been docketed either (1) request the court to issue a citation requiring defendant to appear personally at a specified time and place to show cause why an order should not be issued on the basis of the complaint on file and cause a copy of the complaint and of the citation to be served

upon the obligor at least 10 days prior to the hearing or (2) request the issuance of a summons and cause a copy of the complaint and summons to be served upon the obligor.

(c) If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may order him to represent the obligee or may undertake the representation.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1959, ch. 710, § 7; S. 1970, ch. 1126, § 17; S. 1976, ch. 1166, § 2; S. 1979, ch. 1030, § 9.)

Cases

In proceeding under this Act initiated in New York against California defendant, California court has jurisdiction to hear and determine matter despite fact that defendant had no notice of New York proceeding until he was served in California proceeding. Whittlesey v. Bellah (1955) 130 C.A.2d 182, 278 P.2d 511.

In proceeding under this Act initiated in New York against California defendant, California courts have jurisdiciton to ascertain and enforce adequate support for child; it is sufficient for jurisdiction that New York is place of residence of child, and that California is place of residence of father. Id.

Direction to "take such action as is necessary in accordance with the laws of this State to obtain jurisdiction" is legislative direction to person initiating action to follow general procedure provided for in acquisition of jurisdiction in ordinary civil actions. Pousson v. Superior Court (1955) 165 C.A.2d 750, 332 P.2d 766.

Where citation used lacks necessary ingredients to comply with requirements of summons, its service does not confer on court jurisdiction of person. Id.

§ 1681. Prosecutor's Duty To Locate Obligor or his Property; Transmission of Proceedings.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this title apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (S. 1959, ch. 710, § 9; am.S. 1970, ch. 1126, § 18; S. 1972, ch. 1118, § 4; S. 1976, ch. 812, § 1; S. 1979, ch. 1020, § 10.)

§ 1682. Order for Support or Reimbursement; Property Subject to Order; Place of Payment; Enforcement.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this title shall require that payments be made to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (S. 1953, ch. 1290, § 2 as § 1683; am.S. 1959, ch. 710 § 10; amended and renumbered S. 1970, ch. 1126, § 20.)

Cases

In general.

Reciprocal Enforcement of Support Act (§§ 1650-1690) of this State did not deny husband equal protection laws of this State by subjecting him to laws of Virginia and purporting to allow entry of order for support of nonresident child whose custody was not subject to jurisdiction of court, in action initiated in Virginia under corresponding act of that State to recover sums for child support from divorced husband living in this State. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

In action to enforce modifiable foreign support obligation either party may tender and litigate any plea for modification that could be presented to courts of State where alimony or support decree was originally rendered. Worthley v. Worthley (1955) 44 C.2d 465, 283 P.2d 19.

Dual enforcement actions.

Although support orders under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) do not nullify and are not nullified by other orders whether issued in California or another State, regardless of priority of issuance, an obligor is not without a remedy against dual enforcement actions and multiple and inconsistent orders as he can request the court to provide that the new order supersede or modify all other orders or can seek consolidation of the various actions. In re Marriage of Straeck, 156 C.A.3d 617 (App. 2 Dist., 1984).

Evidence and witnesses.

In proceeding under this Act to compel defendant to support child alleged to be issue of his marriage to petitioner, where evidence tending to establish existence of prior marriage consisted merely of defendant's allegations that at time of marriage petitioner was "married to another person and that said other person was and is still alive," and that at trial of his annulment proceeding against petitioner herein he introduced letters written by her wherein she admitted he was not father of child as alleged in petition, but petitioner by affidavit denied these allegations and that admissions and letters used by defendant in obtaining annulment decree related to her second child, not child whose paternity was questioned, and defendant failed to produce or account for letters, court could have maintained serious doubts as to defendant's credibility and inference was at least equally great that court considered fact of prior marriage not to have been established and that child in question was defendant's child. Mulalley v. Mulalley (1961) 194 C.A.2d 69, 14 Cal.Rptr. 803.

In proceeding by mother of minor entitled to support against father under this Act, evidence supports finding that father owes duty to support minor where it shows that father took minor from parties' home in Maryland to his mother's home in Michigan, that he sent letter to minor's mother telling her to bring child's things which she did, that two days later mother took child back to Virginia and that parties never saw each other again, father going to Guam, then to Hawaii and finally to California, mother remaining in Virgina and divorcing father while he was in Guam. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

In proceeding under this Act initiated in New York against California defendant, it may be presumed that trial court in California will properly evaluate proof as to child's necessities with ability of father to pay, and with a judicial discretion that will not penalize father for not having been able to cross-examine mother in New York which he may yet do by deposition. Whittlesey v. Bellah (1955) 130 C.A.2d 182, 278 P.2d 511.

Defendant, in proceeding under this Act, is not deprived of property without due process on ground that no provision therein gives him right to cross-examine plaintiff with reference to need for support, since such right is given. Smith v. Smith (1954) 125 C.A.2d 154, 270 P.2d 613.

In proceeding under this Act, extrinsic fraud in obtaining foreign divorce decree adjudicating defendant to be father of child for whom support is sought, constituting defense to proceeding, does not appear in his offer to prove that he did not defend divorce action as result of plaintiff's threats to make derogatory public charges against him, where he appeared personally in divorce action, was not prevented from having his day in court, made no objection to complainant's allegations as to his fatherhood, and permitted decree to become final. Id.

Jurisdiction; orders in courts of initiating and responding States.

In a proceeding under the Uniform Reciprocal Enforcement of Support Act of 1968 (Code Civ. Proc., § 1650 et seq.), initiated by a mother who resided with her child in Pennsylvania, for enforcement of a child support order, the trial court had no jurisdiction to make an order providing the father with visitation rights, where the order was made without any written application therefor or other advance notice to the mother that any such relief was sought; where there were no circumstances justifying the exercise of jurisdiction over the child, who neither resided in nor was present in California, and where the purpose of the proceeding was limited to enforcing the duty of support

arising under the laws of this State against the father who was present in the State. Furthermore, the mother's application for support pursuant to the act did not constitute a submission to the jurisdiction of the California court with respect to the matter of custody, in view of the provisions of Code Civ. Proc., § 1690, providing that participation in any proceeding under the Uniform Act does not confer jurisdiction on any court over any of the parties thereto in any other proceeding. McDowell v. Orsini (1976) 54 C.A.3d 951, 127 Cal.Rptr. 285.

In proceedings under the Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1650 et seq.), initiated by petition in a court in a sister-State by the former wife after she had been divorced in California and had moved to the sister-State, it was reversible error for the California court to conclude that it was without jurisdiction in those proceedings to modify the support order which had been made by the California court in the original divorce proceedings. Trippe v. Trippe (1975) 53 C.A.2d 982, 126 Cal.Rptr. 214.

A woman who, pursuant to the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., §§ 1650 et seq.), had invoked a California court's jurisdiction to enforce and uphold the validity of a Nevada divorce decree which had been obtained by her husband, was thereby precluded from subsequently challenging the validity of the Nevada decree. The doctrine of res judicata and estoppel applied, not only to all matters which were adjudicated in the Nevada proceeding, but also to all matters which might have been presented therein. Thus, it was error for the California court to award her alimony on the premise that the Nevada decree was void. Toth, In re (1974) 38 C.A.3d 205, 113 Cal.Rptr. 131.

In California an order for child support is not retractively modifiable, and, while the trial court was without power in a proceeding under the Reciprocal Enforcement of Support Law (Code Civ. Proc., §§ 1650 et seq.), to permanently prevent collection of past-due arrearages, it did have power to prevent abuse of its processes, and it appeared that the court's real intention in making an order directing the District Attorney not to cause any writs of execution to issue so long as defendant made payments currently falling due was to prevent issuance of further writs except on court order after notice and hearing, where one writ had been previously obtained by an affidavit which did not accord with the true facts, where there existed the possibility of further inaccuracies, as well as of legitimate dispute over allowable credits, and where there was nothing in the order to prevent an application for a modification at any time by a showing of the true State of affairs. Sanford v. Sanford (1969) 273 C.A.2d 535, 78 Cal.Rptr. 144.

Where at time of resident father's motion to vacate order, in proceeding by nonresident mother under this Act for support of child, directing him to pay certain monthly sum for child's support, order had become final, trial court had no alternative but to deny motion. Harmon v. Harmon (1960) 184 C.A.2d 245, 7 Cal.Rptr. 279, app. dismd. cert. den. 366 U.S. 270, 6 L.Ed.2d 382, 81 S.Ct. 1100.

In proceeding under this Act, it is no abuse of discretion to refuse to allow father visitation privileges during summer vacation. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

In proceeding under this Act, father can be compelled to furnish support for child outside father's home where there has been no determination that he is entitled to child's custody, and father's assertion that he is willing and able to support child at his domicile is not sufficient. Id.

In proceeding under this Act initiated in New York against California defendant, amount of support money required by child is entirely at large in this State, and California court is not bound by recommendation of New York court or by proof for child presented in that court. Whittlesey v. Bellah (1955) 130 C.A.2d 182, 278 P.2d 511.

Where decree of Ohio court awarding the wife alimony without divorce was made by court having jurisdiction over person of husband and such order was not terminated by divorce granted husband by Florida court on substituted service, California superior court has jurisdiction, based on personal service of process on husband, to make reasonable order for support of former wife in proceeding under this title. Gohdes v. Gohdes (1955) 134 C.A.2d 819, 286 P.2d 539.

Review.

The right to appeal from an order of a California court denying relief under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1670 et seq.) being governed by California law, the order is appealable as a final judgment entered in a special proceeding in the superior court (Code Civ. Proc., § 963 subd. 1). Elkind v. Byck (1968) 68 C.2d 453, 67 Cal.Rptr. 404, 439 P.2d 316.)

§ 1683. Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence which constitutes a defense, the court, upon request of either party, shall continue the case for further hearing and the submission of evidence by both parties either by deposition or person appearance. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (S. 1959, ch. 710, § 11 as § 1683.5; amended and renumbered S. 1970, ch. 1126, § 21.)

Cases

Code Civ. Proc., § 1683, providing that in a case under the Revised Uniform Reciprocal Enforcement of Support Act, the court must on request of either party continue the case for submission of the wife's evidence when the husband raises a defense, contemplates that the prosecuting attorney representing the wife shall use the machinery of deposition and interrogatories. Hight, In re (1977) 67 C.A.3d 498, 136 Cal.Rptr. 685.

§ 1684. Transmission of Copy of Order.

The responding court shall cause a copy of all support orders to be sent to the initiating court or agency and to the obligor.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 22; S. 1976, ch. 1167, § 2; S. 1979, ch. 1030, § 11.)

§ 1685. Terms and Conditions of Order.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to :

(1) Require the obligor to furnish a cash deposit or bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1959, ch. 710, § 12; S. 1970, ch. 1126, § 23.)

Cases

In a proceeding initiated under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., § 1650 et seq.), for enforcement of a child support order establishing $55 per month as a reasonable amount to be contributed by the father for the benefit of the child, a provision of the order conditioning the mother's receipt of support for the minor child upon compliance with a portion of the order granting the father the right of visitation with the child, was an abuse of discretion as being in violation of the State's policy strongly favoring enforcement of the child support obligation for the benefit of the child. McDowell v. Orsini (1976) 54 C.A.3d 951, 127 Cal.Rptr. 285.)

It was not abuse of discretion to refuse to allow father visitation privileges during summer vacation. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

Where decree of Ohio court awarded wife alimony without divorce was made by court having jurisdiction over person of husband and such order was not terminated by divorce granted husband by Florida court on substituted service, California superior court has jurisdiction, based on personal service of process on husband, to make reasonable order for support of former wife in proceeding under this Act. Gohdes v. Gohdes (1955) 134 C.A.2d 819, 286 P.2d 539.

§ 1686. Duties of Responding Court.

A responding court has the following duties which may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 24.)

§ 1687. Duties of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the county clerk, probation officer, or other officer of the court or county officer designated by the court for such purpose.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 25.)

§ 1688. Applicability of Interspousal Communication Privilege.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this title. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (S. 1953, ch. 1290, § 2.)

§ 1689. Crediting Payments for Other Orders of Support.

A support order made by a court of this State pursuant to this title does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar provision of law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1959, ch. 710, § 13; S. 1970, ch. 1126, § 26.)

Cases

In general.

The effect of the 1970 amendment to Code Civ. Proc., § 1689 relating to orders of California courts as responding courts in proceedings under the Uniform Reciprocal Enforcement of Support Act, is to give the power to modify a prior support order when specifically exercised. A reciprocal support order, in and of itself, still does not supersede a prior support order. However, a reciprocal order can supersede and effectively modify a prior support order if the responding court specifically so provides in its order. Popenhager, In re (1979) 99 C.A.3d 514, 160 Cal.Rptr. 379.

The trial court erred in retroactively modifying a child support provision of an interlocutory dissolution decree to correspond to child support provisions arising out of a subsequent enforcement suit brought by the wife pursuant to former Code Civ. Proc., § 1689, a part of the Uniform Reciprocal Enforcement of Support Act. Under former Code Civ. Proc., § 1689 which provided that a reciprocal support order, in and of itself, will not act to supersede a prior support order arising from a dissolution action, a reciprocal support order, which differed in face amount from the prior dissolution action support order and did not expressly mention modification, did not automatically and after-the-fact, modify the dissolution order; the amount on the face of the reciprocal order merely represented the sum currently enforceable. Furthermore, the record

indicated that no express plea for modification was presented for consideration in the issuance of the reciprocal support order; the husband's mere representation that he could only afford to make smaller monthly payments at the time did not constitute such a plea. Id.

Under a trial court judgment establishing, as an enforceable California order and decree, a Washington divorce decree rendered 16 years earlier (pursuant to which the ex-husband was ordered to pay support for his children in the custody of his ex-wife who was at all times resident in California), the ex-wife, though barred under a Washington statute from collecting installments falling due more than 6 years before the filing of her California enforcement action, was nevertheless entitled under California law (Civ. Code, § 1479), insofar as such installments had not been paid, to apply thereto subsequent support payments as and when received (except payments required to be currently applied by an order under the Uniform Reciprocal Enforcement of Support Act (Code Civ. Proc., §§ 1650 et seq.) to the extent that any such back installments had not been extinguished by the 6-year rule; it was thus reversible error for the trial court to exclude evidence of installments paid and unpaid during the first 10 years, and to refuse, on the ground that during the last 6 years she had received a total amount aggregating what was due for that last period alone, to give the ex-wife judgment for any accrued support payments. Parhm v. Parhm (1969) 2 C.A.3d 311, 82 Cal.Rptr. 570.

Modification of support order.

Child support order entered in a dissolution action in one California county may be modified by superior court in another county of the State where the order has been registered pursuant to California version of the Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.), notwithstanding that jurisdiction over enforcement has been retained by the dissolution court; declining to follow Thomas v. Thomas, 94 P.2d 810 (Cal., 1931). In re Marriage of Straeck, 156 C.A.3d 617 (App. 2 Dist., 1984).

§ 1690. Jurisdiction Not Conferred by Participation in Proceedings.

Participation in any proceeding under this title does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (S. 1953, ch. 1290, § 2; am.S. 1970, ch. 1126, § 27.)

Cases

Mother's application for support pursuant to Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) did not constitute a submission to jurisdiction of California courts with respect to matters of child custody. In re Marriage of Ryall, 154 C.A.3d 743 (App. 5 Dist., 1984).

In a proceeding under the Uniform Reciprocal Enforcement of Support Act of 1968 (Code Civ. Proc., § 1650 et seq.), initiated by a mother who resided with her child in Pennsylania, for enforcement of a child support order, the trial court had no jurisdiction to make an order providing the father with visitation rights, where the order was made without any written application therefor or other advance notice to the mother that any such relief was sought; where there were no circumstances justifying the exercise of jurisdiciton over the child, who neither resided in nor was present in California, and where the purpose of the proceeding was limited to enforcing the duty of support arising under the laws of this State against the father who was present in the State. Furthermore, the

mother's application for support pursuant to the act did not constitute a submission to the jurisdiction of the California court with respect to the matter of custody, in view of the provisions of Code Civ. Proc., § 1690, providing that participation in any proceeding under the Uniform Act does not confer jurisdiction on any court over any of the parties thereto in any other proceding. McDowell v. Orsini (1976) 54 C.A.3d 951, 127 Cal.Rptr. 285.

This Act does not violate privileges and immunities clauses of Federal and State constitutions by allowing nonresident petitioner to bring action in this State without being subjected to jurisdiction of this State's courts in matter of counterclaim, cross complaint or other affirmative relief. Harmon v. Harmon (1958) 160 C.A.2d 47, 324 P.2d 901.

§ 1691. Prohibited Stay of Proceeding Because of Pending Action.

A responding court shall not stay the proceeding or refuse a hearing under this title because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (S. 1959, ch. 710, § 14; am.S. 1970, ch. 1126, § 28.)

Cases

In general.

Child support order entered in a dissolution action in one California county may be modified by superior court in another county of State where the order has been registered pursuant to California version of the Revised Uniform Reciprocal Enforcement of Support Act, (§ 1650 et seq.), notwithstanding that jurisdiction over enforcement has been retained by the dissolution court; declining to follow Thomas v. Thomas, 94 P.2d 810 (Cal., 1931). In re Marriage of Straeck, 156 C.A.3d 617 (App. 2 Dist., 1984).)

§ 1692. Application of this Title, and Proceedings Thereunder, When Obligee and Obligor in Different Counties in this State.

This title applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which

the copies are forwarded that shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (S. 1959, ch. 710, § 15; am.S. 1970, ch. 1126, § 29.)

§ 1693. Attorney General's Declaration that Foreign Jurisdiction is Reciprocating State.

When the Attorney General is satisfied that reciprocal provisions will be made by any foreign jurisdiction for the enforcement therin of support orders made within this State, the Attorney General may declare the foreign jurisdiciton to be a reciprocating State for the purpose of this Act. Any such declaration may be revoked by the Attorney General. Any such declaration by the Attorney general may be reviewed by the court in an action brought pursuant to this title.

HISTORY: (S. 1968, ch. 1148, § 2; am.S. 1970, ch. 1126, § 30.)

1982 Legislation.

The Attorney General has declared the Province of New Zealand to be a reciprocating State, June 1, 1982.

1984 Legislation.

The Attorney General has declared the Canadian province of Nova Scotia to be a reciprocating State, April 2, 1984.

1985 Legislation.

The Attorney General has declared the Canadian province of Prince Edward Island to be a reciprocating State, May 1, 1985.

§ 1694. Rules of Evidence; Interface with Rights of Custody and Visitation.

In any hearing for the civil enforcement of this title, the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses or modificaion available to a defendant in a proceeding to enforce a foreign support judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (S. 1970, ch. 1126, § 31 as § 1695; renumbered S. 1974, ch. 80, § 1.)

Cases

In general.

Phrase "another obligee" in provision of this section does not refer solely to a public entity such as a welfare department but refers to a parent as well. In re Marriage of Ryall, 154 C.A.3d 743 (App. 5 Dist., 1984).

In proceedings for modifications and enforcements of child custody and child support provisions of an Ohio judgment of divorce, trial court properly conditioned child support on visitation rights. Creed v. Schultz, 148 C.A.3d 733 (App. 1 Dist., 1983).

Mother, custodial parent under decree of dissolution, was obligated to pay child support under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) where father retained custody after a summer visit, especially where mother took no legal action against father, but rather seemed to consent to his custody of children. Carr v. Marshman, 147 C.A.3d 1117 (App. 1 Dist., 1983).

In an action by a former wife under the Revised Uniform Reciprocal Enforcement Support Act (Code Civ. Proc., § 1650 et seq.), to compel the payment of child support, the former wife's denial of visitation rights was not a defense and did not stop the wife from pursuing the enforcement of child support under the act. Code Civ. Proc., § 1694, provides that the determination or enforcement of a duty of support is unaffected by any interference with rights of custody or visitation granted by the court. Moffat v. Moffat (1980) 27 C.3d 645, 165 Cal.Rptr. 877, 612 P.2d 967.

A trial court's order terminating a former husband's obligation to pay child support until further order of the court, entered following an adjudication of contempt against the mother for violation of a court order pertaining to the former husband's visitation rights, was erroneous, as a child may not reasonably be denied support by one parent because of a violation of a court order by the other, and in light of Code Civ. Proc., § 1694, providing that "the determination or enforcement of a duty of support owed to one oligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court." Smith v. Superior Court (1977) 68 C.A.3d 457, 137 Cal.Rptr. 348.

In a paternity action based on a foreign divorce decree, which established the fact of the alleged father's paternity and which was entitled to full faith and credit, Code Civ. Proc., § 1694, restricting a defendant only to defenses in a proceeding to enforce a foreign support judgment, precluded the alleged father's defense of nonpaternity, and the court therefore exceeded its authority in ordering blood test to determine paternity. Craig v. Superior Court (1975) 45 C.A.3d 675, 119 Cal.Rptr. 692.

Code Civ. Proc., § 1695, permitting the court in a support proceeding to adjudicate the paternity issue when the alleged father asserts as his defense that he is not the father of the child and the defense is not frivolous, is in pari materia with Code Civ. Proc., § 1694, which deals specifically with the situation in which the local court is confronted with a final support decree of a foreign c urt. In that event, Code Civ. Proc., § 1694, restricts the defendant only to defenses or modification available to a defendant in a proceeding to enforce a foreign support judgment, so that Code Civ. Proc., § 1695, is thus to be construed to give full deference to the demands of the full faith and credit clause of the United States Constitution. Id.

In an action for support under the Uniform Reciprocal Enforcement of Support Act where the responding jursidiction ordered defendant to make support payments to fulfill his obligation of support and where there is no basis to upset the findings of such court the mere fact that the court made its order when there was a decree outstanding which recited that defendant was entitled to the custody of the children, without more, is not a sufficient ground for reversing the support order. Clark v. Clark (1966) 246 C.A.2d 619, 54 Cal.Rptr. 875.

Evidence supported finding that father owed duty to support minor where it showed that father took minor from parties' home in Maryland to his mother's home in Michigan,

that he sent to minor's mother telling her to bring child's things which she did, that two days later mother took child back to Virginia and that parties never saw each other again, father going to Guam, then Hawaii, and finally to California, mother remaining in Virginia and divorcing father while he was in Guam. Harmon v. Harmon (1958) 160 C.A.2d 47 324 P.2d 901.

Father can be compelled to furnish support for child outside father's home where there has been no determination that he is entitled to child's custody, and father's assertion that he is willing and able to support child at his domicile is not sufficient. Id.

Modification of support order.

Although support orders under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) do not nullify and are not nullifed by other orders whether issued in California or another State, regardless of priority of issuance, an obligor is not without a remedy against dual enforcement actions and multiple and inconsistent orders as he can request the court to provide that the new order supersede or modify all other orders or can seek consolidation of the various actions. In re Marriage of Straeck 203 Cal.Rptr. 69, 156 C.A.3d 617 (App. 2 Dist., 1984).

§ 1695. Adjudication of Paternity Issue.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (S. 1970, ch. 1126, § 32 as § 1696; renumbered S. 1974 ch. 80, § 2.)

Cases

In general.

Doctrine of collateral estoppel precluded former husband from attacking Iowa dissolution decree by relitigating paternity issue as defense in proceeding under this section where former husband was properly served with notice of filing and pendency of dissolution action in Iowa but elected not to appear and contest issues pleaded and where judgment of dissolution was entered finding paternity, granting former wife custody of child, and denominating former husband's payments of former wife's debts as child support. Marriage of Hotz 214 Cal.Rptr. 658 (App. 4 Dist., 1985).

Code Civ. Proc., § 1695, permitting the court in a support proceeding to adjudicate the paternity issue when the alleged father asserts as his defense that he is not the father of the child and the defense is not frivolous, is in pari materia with Code Civ. Proc., § 1694, which deals specifically with the situation in which the local court is confronted with a final support decree of a foreign court. In that event, Code Civ. Proc., § 1694, restricts the defendant only to defenses or modification available to a defendant in a proceeding to enforce a foreign support judgment, so that Code Civ. Proc., § 1694, is thus to be construed to give full deference to the demands of the full faith and credit clause of the United States Constitution. Craig v. Superior Court (1975) 45 C.A.3d 675, 119 Cal.Rptr. 692.

§ 1696. Appeal of Support Order by Attorney General.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (S. 1970, ch. 1126, § 33 as § 1697; renumbered S. 1974, ch. 80, § 3.)

§ 1697. Foreign Support Order; Additional Remedies; Registration of Order.

(a) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 1698 to 1699, inclusive.

1(b) A support order made in this State may also be registered pursuant to §§ 1698 to 1699, inclusive, in any county in which either the obligor or the child who is the subject of the order resides.

Cases

Child support order entered in a dissolution action in one California county may be modified by superior court in another county of the State where the order has been registered pursuant to California version of the Revised Uniform Reciprocal Enforcement of Support Act, (§ 1650 et seq.), notwithstanding that jurisdiction over enforcement has been retained by the dissolution court; declining to follow Thomas v. Thomas, 94 P.2d 810 (Cal., 1931). In re Marriage of Straeck, 156 C.A.3d 617 (App. 2 Dist., 1984).

In trial court erred in refusing to enforce by contempt a former wife's claim against her former husband for unpaid spousal support under a marital settlement agreement "incorporated by reference" in an Arizona divorce decree registered in California pursuant to Code Civ. Proc., §§ 1697-1699. The matter was governed by Arizona law and under that law the agreement was merged in the decree and enforceable by contempt. Slight variations between the laws of the two States as to the exact circumstances under which a settlement agreement is deemed merge in a decree did not render enforcement of the decree contrary to California public policy. Marriage of Alper, In re (1981) 116 C.A.3d 925, 172 Cal.Rptr. 402.

§ 1698. Registration of Foreign Support Order.

The obligee may register a foreign support order or a foreign order for the assignment of wages for support in a court of this State in the manner, with the effect, and for the purposes provided in this chapter.

HISTORY: (S. 1974 ch. 80 § 5; S. 1985, ch. 948, § 2.)

§ 1698.1. Registry of Foreign Support Order.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (S. 1974, ch. 80, § 6.)

§ 1698.2. Representation of Obligee in Foreign Support Proceedings.

If this State is acting either as a rendering or a registering State the prosecuting attorney shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to represent the obligee or may undertake the representation.

HISTORY: (S. 1974, ch. 80, § 7.)

§ 1698.3. Procedure for Registration of Foreign Support Order; Notice to Obligor.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list ot the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send, by any form of mail requiring a return receipt from the addressee only, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. Proof shall be made to the satisfaction of the court that the obligor received the notice of registration by mail or other method of service. A return receipt signed by the obligor shall be satisfactory evidence of such personal receipt. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (S. 1974, ch. 80, § 8; am.S. 1976, ch. 1166, § 3.)

Cases

Under Revised Uniform Reciprocal Enforcement of Support Act (§ 1650 et seq.) registration of foreign support order can occur before assets of obligor are located. Gingold v. Gingold, 161 C.A.3d 1177 (App. 1 Dist., 1984).

In a proceeding to compute arrearage of a former husband's child support obligation, the judgment of a Missouri court duly registered in California pursuant to Code Civ. Proc., § 1698.3, ordering the husband to pay child support for minor children was properly given full faith and credit and the arrearage calculated to include the support of two children who had reached age 18 and were under age 21. Under Missouri law, arrearage

under a judgment for the support of minors which has acrrued after they are 18 or over but before the age of 21, is unmodifiable by the courts of that State, and the court-ordered support of the minor children was therefore required to be paid until age 21 or emancipation under the common law rule. Re Marriage of Taylor (1981, 2d Dist.) 122 Cal.App. 3d 209, 175 Cal.Rptr. 716.

§ 1699. Effect of Registration of Foreign Support Order; Time for Obligor to Vacate; Hearing to Enforce Order.

(a) Upon registration the foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner. Upon registration, a foreign order for the assignment of wages for support shall be treated for all purposes in the same manner as an order for assignment of wages entered pursuant to § 4701 or 4801.6 of the Civ. Code.

(b) The obligor has 20 days after the mailing or other service of notice of the registration in which to petition the court to vacate the registration or for other relief. If the obligor does not so petition the registered order is confirmed.

(c) At the hearing to enforce the registered order the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a support judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If the obligor shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (S. 1974, ch. 80, § 9; am.S. 1975, ch. 678, § 7; S. 1976, ch. 1166, § 4; am.S. 1985, ch. 948, § 3.)

Cases

In action brought by ex-wife against former husband to have a Pennsylvania support order transferred to California and entered as a money judgment, former husband was entitled to raise as an affirmative defense his contention that ex-wife's action on the Pennsylvania judgment was barred by the California statute of limitations, despite former husband's failure to appear at the Pennsylvania hearing or to appeal from the Pennsylvania judgment. Morris v. Cohen, 149 C.A.3d 507, cert. den. 105 S.Ct. 243, 83 L.Ed.2d 182 (App. 4 Dist., 1983).

Support order in a foreign State divorce decree subject to retroactive and prospective modification in the jurisdiction of the original decree may be the basis for a California judgment for unpaid support, but enforcement of that portion of the decree awarding support need not be given full faith and credit by a California court. Such enforcement is not a matter of right, but a comity, and discretion is given to the California court as to enforcement. Support provided for in the foreign State decree may be modified to the extent that it would be modifiable in the jurisdiction of the original decree. Thus, a

decree of a sister-State that is enforceable by a California judgment may be modified retrospectively and prospectively as circumstances dictate, where both retrospective and prospective modification is permissible in the jurisdiction of the original decree. Comstock v. Comstock (1981) 116 C.A.3d 481, 172 Cal.Rptr. 148.

In an action by divorced wife to enforce by a money judgment a child support order in a sister-State divorce decree requiring her former husband to make monthly payments to her for the parties' five children in which the court rendered judgment for the wife, the court's interpretation of the decree to require an automatic reduction in the child support payments each time a child reached majority or became emancipated constituted reversible error, where the order was for a lump sum monthly amount "until the said children become of legal age, self-supporting or further order of the court," and where no proof was offered that would provide the basis for modification of the order. If any reduction were to be made in the child support payments the burden was on the former husband to prove what reduction should be made, as dictated by the circumstances of the parties, on each child reaching majority or becoming emancipated. Id.

§ 1699.4. Support Orders Rendered in Court of County Other Than That of Rendering Court; Service of Copy by Mail.

In any case in which a support order issued by a court of this State is registered in the court of a county other than that of the rendering court, the obligee shall serve a copy of any subsequent modification of the order on the rendering court, by mail.

HISTORY: (S. 1985, ch. 948, § 4.)

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COLORADO

COLO. REV. STAT. §§ 14-5-101 to 14-5-144

§ 14-5-101. Short Title.

This article shall be known and may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act."

HISTORY: (R & RE, L. 71, p. 515, § 1; C.R.S. 1963, § 43-2-43.)

§14-5-102. Legislative Declaration.

The purposes of this article are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (R & RE, L. 71, p. 506, § 1; C.R.S. 1963, § 43-2-1.)

Cases

The purpose of the Uniform Reciprocal Enforcement of Support Act is to provide for the enforcement of duties of support. Vigil v. Vigil, 30 Colo.App. 452, 494 P.2d 609 (1972).

And the duty of a father to support his children is not dependent upon the residence of the children. Id.

Because the only real issues are the duty of support and the ability of the father to pay support. Id.

And neither the fact that the mother removed the children from Colorado without the defendant's consent nor the fact that he is willing to support them in Colorado relieves the defendant from his duty to support the children. Id.

Because the procedure provided for enforcement of the duty of support by the Uniform Reciprocal Enforcement of Support Act is not limited to cases where the father has left the State of the common domicile, but it applies equally where the wife has taken the children from the State of the common domocile. Id.

And if the children are present in the "initiating State", the duty to support the children may be enforced in any "responding state" where jurisdiction over the father can be obtained. Id.

However, a District Court has no power to determine the paternity of a child in the reciprocal support proceedings. Nye v. District Court, 168 Colo. 272, 450 P.2d 669 (1969).

The uniform support law enacted by the State of California and the Colorado Uniform Reciprocal Enforcement Support Law are reciprocal laws and, so far as affecting civil liability, they are substantially the same. Potter v. Potter, 131 Colo. 14, 278 P.2d 1020 (1955).

The purpose of the Uniform Reciprocal Enforcement of Support Act, etc. In accord with original. See County of Clearwater v. Petrash, 41 Colo.App. 143, 589 P.2d 1370

(1978), aff'd in part and rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979); Rohrer v. Kane, 44 Colo.App. 85, 609 P.2d 1121 (1980).

Effect of child custody jurisdiction act. The purposes and concerns of the Uniform Reciprocal Enforcement of Support Act are compatible with and distinct from those of the uniform child custody jurisdiction act so that a proceeding under one act is not precluded by the other. County of Clearwater v. Petrash, 41 Colo.App. 143, 589 P.2d 1370 (1978), aff'd in part and rev'd on other grounds, 198 Colo. 231, 598 P.2d 138 (1979).

This article must be liberally construed, and thus, Colorado courts have authority to order child support under the provisions of this act commensurate with the current needs of the children and the abilities of the obligor, without being limited by previous support orders. Rohrer v. Kane, 44 Colo.App. 85, 609 P.2d 1121 (1980).

Child's right to support is unaffected by misconduct of his parents. County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

Thus violation by one parent of terms of custody decree may not be raised as defense in an action against the other parent to obtain support under the Uniform Reciprocal Enforcement of Support Act. Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979); County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

Applied in Partridge v. Partridge, 43 Colo.App. 253, 601 P.2d 662 (1979).

§ 14-5-103. Definitions.

As used in this article, unless the context otherwise requires:

(1) "COURT" means any District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise. "Duty of Support" includes the duty to pay arrearages of support past due and unpaid.

(3) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this article.

(4) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(5) "LAW" includes both common and statutory law.

(6) "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "PROSECUTING ATTORNEY" means any district or county attorney of this State or the public official in the appropriate place who has a duty to enforce criminal laws relating to the failure to provide for the support of any person.

(8.5) "PROSECUTING ATTORNEY" shall also mean any private attorney of this State hired by a district or county attorney, and when necessary, deputized pursuant to § 20-1-201, Colo.Rev.Stat., for the purpose of enforcing criminal laws relating to the failure to provide for the support of any person. Population limitations pursuant to § 20-1-201(1)(b), Colo.Rev.Stat., shall not apply to this subsection (8.5).

(9) "REGISTER" means to file in the Registry of Foreign Support Orders.

(10) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(11) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(13) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (R & RE, L. 71, p. 506, § 1; C.R.S. 1963, § 43-2-2; L. 85, p. 591, § 6.)

Cases

Applied in People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982); Dewar v. LeNard, 653 P.2d 82 (Colo.Ct.App. 1982); Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979).

§ 14-5-104. Remedies Additional to Those Now Existing.

The remedies provided in this article are in addition to and not in substitution for any other remedies.

HISTORY: (R & RE, L. 71, p. 507, § 1; C.R.S. 1963, § 43-2-3.)

Equitable doctrine of unclean hands will not relieve father of his duty to support his child under this article. Kansas State Dept. of Social & Rehabilitation Servs. v. Henderson, 620 P.2d 60 (Colo.Ct.App. 1980).

Rights and duties under marriage dissolution decree unaffected by court's support order. A support order by a Colorado court, as the responding court in a proceeding under this article, does not affect the parties' rights and duties under a dissolution of marriage decree. Id.

In a proceeding for the dissolution of marriage in which no personal service in the State of Colorado had been made upon the husband, the trial court could not issue an award of child support and order that it should supersede any award for child support which the wife had obtained through this article. Offerman v. Alexander, 185 Colo. 383, 524 P.2d 1082 (1974).

Since the enactment of the Uniform Reciprocal Enforcement of Support Act in Colorado, there are now two distinct courses of action which a demanding State may take with respect to one who does not carry out his obligations of support to his family, namely, (1) extradition on a criminal charge of nonsupport, and (2) the initiation of civil proceedings under the Uniform Reciprocal Enforcement of Support Act. Conrad v. McClearn, 166 Colo. 568, 445 P.2d 222 (1968).

And either or both courses may be pursued, and the election lies wholly within the demanding State and the obligee. Id.

The time to raise a defense, is when there is an attempt to punish under both the criminal and the civil proceedings. Id.

And if a trial court in its discretion believes that proper support can be assured without applying the statute, it is free to do so. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965).

The jurisdiction of the District Court of Adams County, which arose from the filing and disposition of the divorce action did not preclude the District Court of the city and county of Denver from proceeding pursuant to the reciprocal support act when the mother and children had moved to Nevada. Id.

And even though the Adams County District Court acquired jurisdiction by the filing of a divorce action it could not serve to exclude proceedings under the reciprocal support act because the question of support of minor children is a question which can be litigated separate and apart from divorce proceedings. Id.

Applied in County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979); Rohrer v. Kane, 198 Colo.App. 231, 609 P.2d 1121 (1980).

§ 14-5-105. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 14-5-108, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (R & RE, L. 71, p. 507, § 1; C.R.S. 1963, § 43-2-4.)

Cases

Applied in County of Clearwater v. Petrash, 41 Colo.App. 143, 589 P.2d 1370 (1978).

§ 14-5-106. Interstate Rendition.

(1) The Governor of this State may:

(a) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(b) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this article apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (R & RE, L. 71, p. 507, § 1; C.R.S. 1963, § 43-2-5.)

§ 14-5-107. Conditions of Interstate Rendition.

(1) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any District Attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this article or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any District Attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective, but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-6.)

§ 14-5-108. Choice of Law.

Duties of support applicable under this article are those imposed under the laws of any State where the obligor was present for the period during which support is sought.

The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-7.)

Cases

Where the obligor resides in Colorado, he is bound by Colorado law on the issue of when liability for support terminates. McDonald v. McDonald, 634 P.2d 1031 (Colo.App.1981).

Termination of support liability for Colorado resident. Where the obligor resides in Colorado, he is bound by Colorado law on the issue of when liability for support terminates. McDonald v. McDonald, 634 P.2d 1031 (Colo.Ct.App. 1981).

Applied in County of Clearwater v. Petrash, 41 Colo.App. 143, 589 P.2d 1370 (1978); Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979).

Applied in County of Clearwater v. Petrash, 41 Colo.App. 143, 589 P.2d 1370 (1978); Gruber v. Wallner, 198 Colo. 235, 598 P.2d 135 (1979).

The validity of orders to furnish support and reimbursement are predicated upon a duty to support. Aguilar v. Holcomb, 155 Colo. 530, 395 P.2d 998 (1964).

And an order by the California court that the defendant owes a duty of support to the children residing in California was not enforcible in Colorado; where the question as to whether defendant had a duty to support the children, whom it was alleged were his, a fact put in issue upon which there was no proof, must have been determined according to the laws of the State of Colorado. Id.

The trial court could not find a duty of support on the defendant because it does not have any jurisdiction to determine paternity as a part of the reciprocal nonsupport act. Id.

And a determination of the type of duty to support based on paternity could not be made in the Colorado District Court as ancillary to the proceedeings under the reciprocal enforcement of support act. Aguilar v. Holcomb, 155 Colo. 530, 395 P.2d 998 (1964).

§ 14-5-109. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this article as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-8.)

Cases

Applied in County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

§ 14-5-110. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this article, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-9.)

§ 14-5-111. Jurisdiction.

Jurisdiction of any proceeding under this article is vested in the District Courts. The District Court may refer certain matters to the family law referee pursuant to p. 3 of art. 5 of title 13, Colo.Rev.Stat.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-10; am.L. 85, p. 591, § 7.)

§ 14-5-112. Contents and Filing of Complaint for Support; Venue.

(1) The complaint shall be verified and shall state the name and, so for as known to the obligee, the address and circumstances of the obligor, the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(2) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (R & RE, L. 71, p. 508, § 1; C.R.S. 1963, § 43-2-11.)

§ 14-5-113. Officials To Represent Obligee.

If this State is acting as an initiating State, the District Attorney, upon the request of the court, shall represent the obligee in any proceeding under this article. If the District Attorney neglects or refuses to represent the obligee, the Department of Social Services, through the Attorney General, may undertake the representation.

HISTORY: (R & RE, L. 71, p. 509, § 1; C.R.S. 1963, § 43-2-12.)

§ 14-5-114. Complaint for a Minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (R & RE, L. 71, p. 509, § 1; C.R.S. 1963, § 43-2-13.)

§ 14-5-115. Duty of Initiating Court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the complaint and its certificate and one copy of this article to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (R & RE, L. 71, p. 509, § 1; C.R.S. 1963, § 43-2-14.)

§ 14-5-116. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees shall not have priority over amounts due to the obligee.

HISTORY: (R & RE, L. 71, p. 509, § 1; C.R.S. 1963, § 43-2-15.)

§ 14-5-117. Jurisdiction by Arrest.

(1) If the court of this State believes that the obligor may flee, it may:

(a) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(b) As a responding court, obtain the body of the obligor by appropriate process. Thereupon, it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (R & RE, L. 71, p. 509, § 1; C.R.S. 1963, § 43-2-16.)

§ 14-5-118. State Information Agency.

(1) The Department of Social Services is designated as the State Information Agency under this article, and it shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this article and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the general assembly, the agency shall distribute copies of any amendments to this article and a statement of their effective dates to all other State Information Agencies;

(b) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this article; and

(c) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of this or a similar law which it receives from courts or information agencies of other States.

(d) Carry out the enforcement of support requirements pursuant to § 26-13-109, Colo.Rev.Stat.

(2) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.

(3) After the deposit of three copies of the complaint and certificate and one copy of the law of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, the Department of Social Services, through the Attorney General, may undertake the representation.

HISTORY: (R & RE, L. 71, p. 510, § 1; C.R.S. 1963, § 43-2-17; L. 73, p. 1224, § 17; am.L. 79, p. 638, § 1.)

§ 14-5-119. Duty of the Court and Officials of this State as Responding State.

(1) After the responding court receives copies of the complaint, certificate, and this or a similar law from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the Department of Social Services, through the Attorney General, may undertake the representation.

HISTORY: (R & RE, L. 71, p. 510, § 1; C.R.S. 1963, § 43-2-18.)

Cases

Applied in Rohrer v. Kane, 44 Colo.App. 85, 609 P.2d 1121 (1980); People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982); Dewar v. LeNard, 653 P.2d 82 (Colo.Ct.App. 1982).

§ 14-5-120. Further Duties of Court and Officials in the Responding State.

(1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(2) If the obligor or his property is not found in the judicial district and the prosecuting attorney discovers that the obligor or his property may be found in another judicial district of this State or in another State, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other judicial district or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this article apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (R & RE, L. 71, p. 511, § 1; C.R.S. 1963, § 43-2-19.)

§ 14-5-121. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (R & RE, L. 71, p. 511, § 1; C.R.S. 1963, § 43-2-20.)

Cases

Applied in Dewar v. LeNard, 653 P.2d 82 (Colo.Ct.App. 1982).

Where denial of continuance not prejudicial. Where the trial court has before it the affidavits filed in the initiating State, as well as the deposition of the absent obligee, and the obligor has declined the court's offer to provide a subpoena duces tecum in conjunction with letters rogatory so the obligor could obtain financial documents from the obligee, there is no prejudice resulting from the trial court's denial of the obligor's request for a continuance. Rohrer v. Kane, 44 Colo.App. 85, 609 P.2d 1121 (1980).

Eventual and belated compliance with a prior support order may be a defense to an action, but each case must be decided on its own facts and circumstances. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965).

It may be a defense if the trial court chooses not to enter an order under the action brought pursuant to the act. Id.

§ 14-5-122. Immunity from Criminal Prosecution.

If, at the hearing, the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer; in which event, he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury in the first degree committed in this testimony.

HISTORY: (R & RE, L. 71, p. 511, § 1; C.R.S. 1963, § 43-2-21; L. 72, p. 558, § 15.)

§ 14-5-123. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (R & RE, L. 71, p. 511, § 1; C.R.S. 1963, § 43-2-22.)

§ 14-5-124. Rules of Evidence.

In any hearing for the civil enforcement of this article, the court shall be governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to parentage or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee shall be unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (R & RE, L. 71, p. 511, § 1; C.R.S. 1963, § 43-2-23; am.L. 78, p. 263, § 48.)

Cases

Child's right to support is unaffected by misconduct of his parents, and when a court conditions the disbursement of child support payments upon the custodial parent's

complying with visitation orders, the court errs as a matter of law. People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982)

Applied in County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

§ 14-5-125. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this article shall require that payments be made to the clerk of the court of the responding State. The court may order that the obligor initiate the inclusion of the child under a medical insurance policy currently in effect for the benefit of the obligor, purchase medical insurance for the child, or in some other manner provide for the current or future medical needs of the child or children. At the same time, the court may make a determination of whose responsibility it shall be to pay required medical insurance deductibles and co-payments. The court and prosecuting attorney of any judicial district in which the obligor is present or has property shall have the same powers and duties to enforce the order as have those of the judicial district in which it was first issued. If enforcement is impossible or cannot be completed in the judicial district in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any judicial district in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (R & RE, L. 71, p. 512, § 1; C.R.S. 1963, § 43-2-24; am.L. 85, p. 591, § 8.)

Cases

Applied in People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982).

Discretion is reposed in the trial court to determine how best to cope with problems presented under this article. Jackson v. Jackson, 157, Colo. 564, 404 P.2d 281 (1965).

If it believes that payments should be made to the initiating State under the act, such can be done as an additional remedy, but such action is not mandatory. Id.

And if a trial court in its discretion believes that proper support can be assured without applying the statute, it is free to do so. Id.

§ 14-5-126. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (R & RE, L. 71, p. 512, § 1; C.R.S. 1963, § 43-2-25.)

§ 14-5-127. Additional Powers of Responding Court.

(1) In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and, in particular, to:

(a) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(b) Require the obligor to report personally and to make payments at specified intervals to the clerk or probation department of the court; and

(c) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (R & RE, L. 71, p. 512, § 1; C.R.S. 1963, § 43-2-26.)

§ 14-5-128. Parentage.

If the obligor asserts as a defense that he is not the parent of the child for whom support is sought, and if it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the parentage issue. Otherwise, the court may adjourn the hearing until the parentage issue has been adjudicated.

HISTORY: (R & RE, L. 71, p. 512, § 1; C.R.S. 1963, § 43-2-27; am.L. 78, p. 263, § 49.)

Cases

Determination of paternity in divorce or annulment action. The parentage of a child is not an issue necessarily decided in a divorce or annulment action. However, where, as a part of a divorce action, the court hears evidence, makes a child support order, and by necessary implication has determined the paternity of the child, this determination is res judicata at least between the spouses. McNeece v. McNeece, 39 Colo.App. 160, 562 P.2d 767 (1977).

§ 14-5-129. Additional Duties of Responding Court.

(1) A responding court has the following duties, which may be carried out through the clerk of the court:

(a) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(b) To furnish to the initiating court, upon request, a certified statement of all payments made by the obligor.

HISTORY: (R & RE, L. 71, p. 512, § 1; C.R.S. 1963, § 43-2-28.)

Cases

Applied in People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982).

§ 14-5-130. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-29.)

§ 14-5-131. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this article because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, the court may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court shall conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jursdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-30.)

Cases

Article confers jurisdiction over child support matters notwithstanding prior action in other proceedings. A court acting on a petition under this article may not dismiss the petition simply because another court has already issued a support order in some other proceeding. Kansas State Dept. of Social & Rehabilitation Servs. v. Henderson, 620 P.2d 60 (Colo.Ct.App. 1980).

Rights and duties under marriage dissolution decree unaffected by court's support order. A support order by a Colorado court, as the responding court in a proceeding under this article does not affect the parties' rights and duties under a dissolution of marriage decree. Id.

§ 14-5-132. Application of Payments.

Support order made by a court of this State pursuant to this article does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a law substantially similar to this article or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against

the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-31.)

Cases

A modification made by the court as an order in the original divorce action relating to future payments being made through the registry fund did not affect plaintiff's rights one way or another and therefore did not result in any error even though the plaintiff had instituted proceedings under the reciprocal act. Jackson v. Jackson, 157 Colo. 564, 404 P.2d 281 (1965) (decided under repealed § 43-2-29, Colo.Rev.Stat. 1963).

§ 14-5-133. Effect of Participation in Proceeding.

Participation in any proceeding under this article does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-32.)

§ 14-5-134. Intrastate Application.

This article also applies when both the obligee and the obligor are in this State but in different judicial districts. If the court of the judicial district in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another judicial district in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the judicial district in which the obligor or his property is found. The clerk of the court of the judicial district receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the judicial district to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-33.)

Cases

Applied in Gonzales v. District Court, 629 P.2d 1074 (Colo. 1981).

§ 14-5-135. Appeals.

(1) If the prosecuting attorney or Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court, if the support order was issued by a court of this State; or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case, expenses of appeal may be paid from funds appropriated for his office.

HISTORY: (R & RE, L. 71, p. 513, § 1; C.R.S. 1963, § 43-2-34.)

Cases

Statute as basis for jurisdiction. See People ex rel. Meveren v. District Court, 638 P.2d 1371 (Colo. 1982).

§ 14-5-136. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 14-5-137 to 14-5-141.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-35.)

§ 14-5-137. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this article.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-36.)

Cases

Statute as basis for jurisdiction. Malmgren v. Malmgren, 628 P.2d 164 (Colo.Ct.App. 1981).

§ 14-5-138. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-37.)

§ 14-5-139. Official To Represent Obligee.

(1) If this State is acting either as a rendering or a registering State, the District Attorney upon the request of the court shall represent the obligee in proceedings under §§ 14-5-137 to 14-5-141.

(2) If the District Attorney neglects or refuses to represent the obligee, the Department of Social Services, through the Attorney General, may undertake the representation.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-38.)

§ 14-5-140. Registration Procedure; Notice.

(1) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court three certified copies of the order with all modifications thereof, one copy of the reciprocal enforcement of support act of the State in which the order was made, and a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post.office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor abvailable upon execution, and a list of the States in which the order is registered. Upon receipt of these documents, the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this article.

(2) Promptly upon registration, the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. The clerk shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-39.)

§ 14-5-141. Effect of Registration; Enforcement Procedure.

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It shall have the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(2) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. Such notice shall include notice of the intent to seek a wage assignment pursuant to § 14-14-107. If he does not so petition, the registered support order is confirmed. Once the support order is confirmed, the court shall order that a wage assignment be prepared and executed by the obligor or the clerk of the court. The prosecuting attorney shall then proceed to activate the wage assignment pursuant to § 14-14-107 in place of the obligee.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (R & RE, L. 71, p. 514, § 1; C.R.S. 1963, § 43-2-40; am.L. 85, p. 591, § 9.)

Cases

When a complaining party registers a foreign support order in the responding State, the procedures and defenses available thereafter are those applicable to an action to enforce a foreign money judgment. In re McMahan, 660 P.2d 515 (Colo.Ct.App., 1983).

Applied in Malmgren v. Malmgren, 628 P.2d 164 (Colo.Ct.App. 1981).

§ 14-5-142. Assistance from the Colorado Bureau of Investigation.

The Department of Social Services may contract with the Colorado Bureau of Investigation for Investigative Services which will assist in carrying out the responsibilities of the department under this article.

HISTORY: (R & RE, L. 71, p. 515, § 1; C.R.S. 1963, § 43-2-41.)

§ 14-5-143. Uniformity of Interpretation.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (R & RE, L. 71, p. 515, § 1; C.R.S. 1963, § 43-2-42.)

§ 14-5-144. Declaration of Reciprocity.

When the Attorney General is satisfied that reciprocal provisions will be made by any foreign jurisdiction for the enforcement therein of support orders made within this State, the Attorney General may declare the foreign jurisdiction to be a reciprocating State for the purpose of this section, and any such declaration may be revoked by the Attorney General. Such a declaration by the Attorney General may be reviewed by the court in an action brought pursuant to this title.

HISTORY: (L. 79, p. 638, § 2.)

CONNECTICUT
CONN. GEN. STAT. ANN. §§ 46b-180 to 46b-211

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§ 46b-180. Definitions.

As used in this part, unless the context requires otherwise:

(1) "BUREAU" means and includes such clerical, fiscal and record-keeping facilities as may be created by the court for the handling of all administrative details incident to proceedings under this part.

(2) "COURT" means the superior court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(3) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, dissolution of marriage, judicial separation, separate maintenance or otherwise. Where any order for the payment of alimony or support to or on behalf of any obligee has been made by the superior court of this State, the amount of such order shall be accepted as determinative of the measure of such obligation, and such order may be enforced by the superior court through proceedings under this part.

(4) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(5) "LAW" includes both common and statute law.

(6) "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "PETITIONER'S REPRESENTATIVE" means and includes such person as may be appointed by the judges of the superior court to represent the petitioner in this State under the provisions of this part.

(9) "RESPONDING STATE" means a State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(10) "STATE" includes any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(11) "SUMMONS" means and includes a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the State or States wherein the petitioner or the respondent resides as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this part.

HISTORY: (1951, Supp. § 1295b; 1953, Supp. § 2434c; 1955, Supp. § 3237d; 1973, P.A. 73-51 1976, P.A. 76-436, § 369.)

Cases

In general.

Identity in language was not essential to reciprocal operation of uniform reciprocal enforcement of support legislation of States of Connecticut and Ohio. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Ohio Uniform Reciprocal Enforcement of Support legislation is "substantially similar" to and reciprocal with the corresponding Connecticut law, within section of statute defining "initiating State", though Ohio Act has no provision like subsection of Ohio Act that any order for payment of alimony of support made by superior court of Ohio shall be determinative as measure of obligation. Id.

Validity.

Statutes in chapter entitled "Uniform Reciprocal Enforcement of Support" are not unconstitutional as an attempt to confer extraterritorial jurisdiction on court of initiating State. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Purpose.

Sections of chapter entitled "Uniform Reciprocal Enforcement of Support" were enacted to provide efficacious mode of procedure to compel performance by those who are under duty to support dependents. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Petition.

Petition for enforcement of support order of Connecticut court under the Reciprocal Enforcement of Support Act to which defendant had demurred was sufficient without alleging that defendant had been adjudicated the father of the illegitimate children he had been ordered to support where record showed that mother and defendant, although never having married, had cohabited for nine years and that three children were born as a result of such cohabitation. Brown v. Thomas (1968) 426 S.W.2d 496, 221 Tenn. 319.

Decisions in other States.

Where husband, who knew of wife's pending divorce action, did not contest it and several years later wife instituted action under Code 1950, § 20.88.12 et seq., to require husband, a California resident, to support parties' child, who had resided with wife for ten years before divorce and at time of divorce, and Virginia court issued certificate that wife's petition set forth facts from which it might be determined that father owed duty of support, definition in West's Ann. Civ. Code, § 1653, subd. (6), of duty of support as including any duty imposable by any court order whether incidental to divorce proceedings or otherwise was not so vague or indefinite as to be unconstitutional as applied to facts of case, and a duty was imposable upon husband to support child even though there had never been a prior court order regarding support. Harmon v. Harmon (1958) 324 P.2d 901, 160 C.A.2d 47.

As defined by West's Ann. Code Civ. Proc. § 1653, "obligor" is the person owing a duty of support, and "obligee" is the person to whom a duty of support is owed. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

References, in definitions contained in the former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq., to other kinds of courts and other kinds of legal officers are for purpose of describing appropriate courts and legal officers in other States having a similar law; and as far as Kentucky is concerned "court" means a county court or circuit court and "petitoner's representitive" means a county attorney. Duncan v. Smith (1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

Comity.

Doctrine of comity allows Connecticut courts to give effect to a retroactively modifiable support and alimony order of a sister State, or a modifiable prospective support and alimony order of such State, but only after affording the defendant an opportunity to raise and litigate any questions of modification that could have been raised had enforcement been sought in the courts of the State where the order was entered, even where proceeding is not brought under the Uniform Reciprocal Enforcement of Support Act. Walzer v. Walzer (1977) 376 A.2d 414, 173 Conn. 62.

§ 46b-181. Remedies Additional to Existing Remedies.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1953, Supp. § 2435c; 1955, Supp. § 3238d; 1958 Rev., § 17.328.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where ex-wife had obtained judgment in Vermont for arrearages in support payments for child, fact that ex-wife did not proceed to enforce judgment in New Jersey under provisions of N.J.Stat.Ann. 2A:4-30.1 et seq., did not make procedure utilized by ex-wife suing on Vermont judgment against public policy of New Jersey. Zelek v. Brosseau (1958) 136 A.2d 416, 47 N.J.Super. 521, aff'd 141 A.2d 17, 26 N.J. 501.

Remedies under N.J.Stat.Ann. 2A:4-30.3 are in addition to and not in substitution for any other remedies. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599.

Minn.Stat.Ann. § 518.41 et seq., is to be construed not merely as preserving all existing remedies intact, but as providing additional remedies which are supplementary and ancillary to all existing remedies. State of Ill. ex rel. Shannon v. Sterling (1956) 80 N.W.2d 13, 248 Minn. 266.

West's Ann. Code Civ. Proc. § 1650 et seq., contemplates two distinct courses of action in the enforcement of support duties, namely, extradition and initiation of civil proceedings in demanding State, with an opportunity thereafter given obligor to submit to

subsequently assumed jurisdiction of court in responding State, and while either or both courses of action may be pursued, the election lies wholly with the demanding State and the obligee. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Where Maryland resident, whose children were domiciled in Delaware, was prosecuted under Code 1951, art. 27, § 96(b), imposing penalty for nonsupport of minor children regardless of presence or residence of children, Code 1951, art. 89c, § 3, did not provide remedy to exclusion of criminal prosecution. State v. James (1953) 100 A.2d 12, 203 Md. 113.

§ 46b-182. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 46b-184, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (1953, Supp. § 2436c; 1955, Supp. § 3239d; 1958 Rev., § 17-329.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

West's Ann. Civ. Code, § 1655, binding obligor, present in California, regardless of presence or residence of obligee, did not deny California father equal protection of law by allowing entry of order for support of nonresident child whose custody was not subject to jurisdiction of California court, even though such § deprived father of right to ask for custody of child and for other relief which would have been available if child had been before California court and denied father relief which would have been available to other fathers who were residents of California. Harmon v. Harmon (1958) 324 P.2d 901, 160 C.A.2d 47.

The duty of a father to support his minor children is a duty flowing directly from him to them without regard to any marital dereliction of his wife. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

During marriage a husband is obliged to support his family in accordance with his financial ability, and a wife is not legally obligated to use her independent assets to maintain her husband and children. Phillips v. Phillips (1956) 150 N.Y.S.2d 646, 1 A.D.2d 393.

Where wife under Minnesota divorce decree was awarded the custody of the minor children of the parties subject to the husband's right of reasonable visitation, deprived husband of such visitation rights by removing children out of the State without husband's consent or court approval, husband was relieved from payment of all unpaid installments of support money accruing during period he had been denied his right of visitation. State of Ill. ex rel. Shannon v. Sterling (1956) 80 N.W.2d 13, 248 Minn. 266.

Only reasonable cause justifying husband's refusal to support wife is conduct on her part which would be valid ground for a divorce decree. Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549; Com. ex rel. Rovner v. Rovner (1955) 111 A.2d 160, 177 Pa.Super. 122.

A husband, in order to defeat his duty to support, must show conduct by his wife that would entitle him to a divorce. Com. v. Williams (1955) 116 A.2d 297, 178 Pa.Super. 313.

Where husband had gross income of $9,300 and net annual income of upwards of $7,100 and wife, a school teacher, during period of sick leave was receiving benefits from school district at the annual rate of $2,700, court order of $35 per week for support of wife was not excessive. Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

Wife was entitled to support from her husband even though she had earning capacity. Id.

Where separation of husband and wife was consensual, husband was not relieved of his duty to support wife. Com. ex rel. Rovner v. Rovner (1955) 111 A.2d 160, 177 Pa.Super. 122

West's Ann. Code Civ. Proc. § 1650 et seq., and '35 C.S.A.Supp. ch. 161A, § 1 et seq., are not limited to cases where obligor flees jurisdiction of initiating State, and are based upon failure to provide needed support for dependents, and flight of obligor is in no way made controlling factor. Smith v. Smith (1955) 281 P.2d 274, 131 C.A.2d 764.

Though obligation of husband to support wife does not arise in contract and is not a debt, it nevertheless is a liability imposed by law as an incident of the marital status. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

Ohio citizen, entitled to equal protection of its laws, could not, in proceeding initiated in Pennsylvania and certified to Ohio under provisions of Gen.Code, §§ 8007.1 to 8007.19, be required to contribute to support of his father, who was resident of Pennsylvania, even though there was no provision in laws of Pennsylvania equivalent to Ohio statute exempting children from obligation to support parents who have wilfully abandoned them during their infancy. Pa. ex rel. Department of Public Assistance, Mercer County Bd. of Assistance v. Mong (1954) 117 N.E.2d 34, 160 Ohio St. 520.

A husband had duty to support his family, and such duty is one of the highest obligations in the social order. Fischer v. Fischer (1953) 93 A.2d 788, 24 N.J.Super. 180, reversed on other grounds 98 A.2d 568, 13 N.J. 162.

The death of either the husband or the wife terminates the husband's obligation to support the wife. Modell v. Modell (1953) 92 A.2d 505, 23 N.J. Super.A.D. 60.

The obligation and duty of husband to support and maintain wife are creatures of common law resting on and growing out of contract of marriage and are enforceable by courts of equity. Wood v. Wood (1953) 61 So.2d 436, 258 Ala. 72.

Support furnished by husband is required to be sufficient to maintain wife according to her reasonable necessities, taking into consideration manner in which she was accustomed to living and husband's ability to provide support. Miller v. Miller (Mo.App.1951) 241 S.W.2d 805.

Change of circumstances.

In proceeding by mother against father under Uniform Reciprocal Enforcement of Support Act for support of their three minor children, evidence that father had remarried and was not seeking employment since he and his wife had arranged that he would stay home and do the housework was sufficient to constitute a substantial change from situation which existed at time of the uncontested dissolution decree entered two months earlier, and thus was sufficient to sustain order that father pay $10 per week for support of each of his children. Byrd v. Byrd (1980) 421 A.2d 878, 36 Conn.Sup. 601.

In action under Uniform Reciprocal Enforcement of Support Act by mother against father for support of their three minor children, court was justified in concluding that father's unemployment was voluntary and that his personal wishes to pursue his lifestyle as an unpaid homemaker could not justify his failure to furnish support for his children. Id.

§ 46b-183. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State of a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (1953, Supp. § 2437c; 1955, Supp. § 3240d; 1958 Rev., § 17.330.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-184. Choice of Law.

Duties of support applicable under this part are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1953, Supp. § 2438c; 1955 Supp. § 3241d, 1958 Rev., § 17-331.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where action for support of child was filed in California court which certified case to Oklahoma District Court, and summons and complaint were served on father, Oklahoma court had jurisdiction of matter under 12 O.S.Supp. § 1600.1 et seq. Green v. Green (Okl.1957) 309 P.2d 276.

Where action for support of child was filed in California court, which certified case to Oklahoma District Court under Uniform Reciprocal Enforcement of Support Act, 12 O.S.Supp. § 1600.21, was applicable and would be enforced. Id.

While the purpose of the 1953 Florida Uniform Support of Dependents Law was to secure support for "dependent wives and children" only, Fla.Stat.Ann. § 88.011 et seq. enacted in 1955, applies to any persons to whom a duty of support is owed, and judgment of dismissal under 1953 Act was not res judicata on proceedings brought under 1955 Act. Thompson v. Thompson (Fla.1957) 93 So.2d 90.

Where wife had obtained divorce in Volusia County, Florida, but later became a resident of Connecticut and brought proceedings under Connecticut law and Fla.Stat.Ann. § 88.011 et seq., which by its terms was designed to provide a remedy entirely separate from and independent of any remedy existing under other applicable provisions of law, the circuit court of Duval County, the place of ex-husband's residence had jurisdiction of the proceedings and could enforce the duty of support decreed in the divorce proceedings by a sister county. Id.

Under R.S.1954, ch. 167, § 1 et seq., laws of responding State, where individual who is allegedly liable for support resides, control, and not the laws of the State in which petition for support is filed. Rosenberg v. Rosenberg (1956) 125 A.2d 863, 152 Me. 161.

Where complaint was filed by wife in Kentucky under Ky.Rev.Stat. 407.010 et seq., as initiating State, and was certified and transferred to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., and husband was present at all times in New Jersey, it was the New Jersey law which was applicable on question of support for children. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

The duties of support under N.J.Stat.Ann. 2A:4-30.1 et seq., are those imposed or imposable under the laws of the State where the obligor was present during the period for which support is sought, and the presumption places on him the burden of going forward with proof that he was not present in the responding State during such period. Id.

The duty of support enforceable under N.J.Stat.Ann. 2A:4-30.1 et seq., is that imposed or imposable by law of New Jersey. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599. N.J.Stat.Ann. 2A:4-30.1 et seq., is not restricted to proceedings against an absconding husband or father who has fled State, and New Jersey court has jurisdiction where husband or father is present in State and children or wife are present in another State and father has duty to support. Id.

§ 46b-185. How Duties of Support Are Enforced.

All duties of support, including payment of arrearages, are enforceable by petition irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be in the superior court.

HISTORY: (1953, Supp. § 2439c; 1955, Supp. § 3242d; 1958 Rev., § 17.332; 1961, P.A. 475, § 1; 1976, P.A. 76.436, § 371, eff. July 1, 1978.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support of minor children subsequent to a foreign decree of divorce, and such action could be maintained in court of common pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

In proceeding under G.L.(Ter.Ed.) ch. 273A, § 1 et seq., to require husband to pay for the support of the children of this divorced wife in Maine, evidence required a finding that there was a duty to support by the husband and that $15 weekly was a reasonable sum. Phillips v. Phillips (1958) 146 N.E.2d 919, 336 Mass. 561.

Where wife, after securing divorce decree and child support order from 17th District Court, Tarrant County, Texas, moved to Indiana while husband continued to reside in Texas, and thereafter wife secured child support order in Indiana court, District Court of Dallas County, Texas, where husband was allegedly residing, did not have jurisdiction under Vernon's Ann. Civ. St. art 2328b-1 et seq., to enter judgment ordering husband to pay child support in accordance with the Indiana support order in view of fact that there was a prior judgment by another District Court of Texas which involved the same parties and adjudicated the same matter. Freeland v. Freeland, Tex.Civ.App. (1958) 313 S.W.2d 943.

The children's court has jurisdiction to entertain proceeding for support of wife alone under McKinney's Unconsol. Law, § 2116. Rivera v. Rivera (1957) 160 N.Y.S.2d 171, 5 Misc.2d 362.

Domestic relations court has narrowly circumscribed jurisdiction and its support order is not binding on parties in later litigation in another court. Morse v. Morse (1957) 153 N.Y.S.2d 957, 3 Misc.2d 163.

Jurisdiction of Juvenile and Domestic Relations Court of cases within N.J.Stat.Ann. 2A:4-30.1 et seq., is more comprehensive and goes beyond that conferred by statutory provisions governing direct proceedings for support, and is not circumscribed by statutory restrictions on jurisdiction in direct proceedings. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super.117, aff'd 123 A.2d 3, 21 N.J. 599.

The jursidiction of the Juvenile and Domestic Relations Court to order support of children, even in the direct proceedings is concurrent with that of the Superior Court, and resort may properly be had to precedents established as a result of proceedings in Superior Court or its predecessor to determine extent of a father's duty to support his children. Id.

Although a wife may be seeking a termination of marriage contract, she, unless barred by her conduct, is entitled to support up to the time when a divorce decree is actually entered and in the meantime, she may enforce her right to support in the municipal court of Philadelphia, or in the Court of Common Pleas on an application therefor alimony pendente lite. Com ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

Where proceeding pursuant to McKinney's Unconsol. Law, § 2111 et seq. was instituted by wife in Domestic Relations Court of the City of New York, against husband domiciled in Dutchess County, the papers were properly forwarded to Dutchess County pursuant to McKinney's Unconsol. Law, § 2116, subd. (c) and respondent husband was properly summoned by Dutchess County Children's Court. Hansen v. Hansen (1955) 142 N.Y.S.2d 248, 207 Misc. 589.

Jurisdiction of proceedings is conferred upon the court by McKinney's Unconsol. Law, § 2114, subd. (a) regardless of State of residence or domicile of petitioner and regardless of whether respondent has ever been a resident of State in which proceeding was initiated or whether dependent person has ever been a resident of State in which respondent is domiciled. Id.

In prosecution of husband for wife and child abandonment, wherein husband was convicted in 1945 and paroled in 1948 on condition that monthly payments of support money be made to court clerk for use and benefit of child, trial court had jurisdiction to make order and judgment in 1950 that one-third of such support money be paid to attorney, who had agreed in 1944 to help wife, then destitute unwed mother, on contingent fee basis of one-third of what he could recover for her, and whose efforts had resulted in creation of support fund. State v. Cosby (Okl.1955) 285 P.2d 210.

In wife's proceeding to require husband to support child born while marriage was in force, evidence did not sustain respondent's burden of proving contention that child was not child of marriage. In re Miller (1952) 114 N.Y.S.2d 304.

§ 46b-186. Appointment and Duties of Petitioner's Representative.

The judges of the superior court shall, at each annual meeting in June, appoint an attorney at law in each judicial district, to be petitioner's representatives thereof. In the Fairfield judicial district they shall appoint one such attorney for Stamford and one such attorney for the remainder of the judicial district. Each petitoner's representative shall hold office from July first in the year of his appointment to July first of the ensuing year. The judges shall, from time to time, make rules and regulations necessary for the conduct of such office. Said judges may, at their discretion, appoint and fix the jurisdiction of additional special petitioner's representatives whenever they deem necessary. It shall be the duty of the petitioner representative to appear on behalf and represent the petitioner in every proceeding pursuant to this part at the time the petition is filed and at all stages of the proceeding thereafter in this State and to obtain and present such evidence or proof as may be required by the court in the initiating State or the responding State and to represent a petitioner from another State by bringing a motion for modification of awards of alimony or support, if he deems it equitable under the circumstances. The petitioner's representative shall, in accordance with the rules and regulations adopted by the judges of the superior court, act within the judicial district for

which he has been appointed. Any vacancy in the office of petitioner's representative shall be filled by the judges or an authorized committee thereof until the following July first.

HISTORY: (1951, Supp. § 1400b; 1958, Supp. § 2441c; 1955, Supp. § 3244d; 1958 Rev., § 17.333; 1961, P.A. 475, § 2; 1969, P.A. 655, § 1; 1976, P.A. 76-17, § 1; 1976, P.A. 76-436, § 372, eff. July 1, 1978; 1977, P.A. 77-452, § 22, eff. July 1, 1978; 1980, P.A. 80-180, § 1; 1981, P.A. 81-472, § 85, eff. July 8, 1981.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where wife, in bringing action for separate maintenance, for some reason adopted procedure under La.Code Ann. § 252A.1 et seq., she could not discard such procedure in part, and her attorney's fees were not a necessary part of her support or necessary to enable her to prosecute the action, since La.Code Ann. § 252A.2, subd. 7, contemplates that proceedings shall be conducted by public officers without expense to petitioners for attorney's fees. Peters v. Peters (Iowa 1958) 86 N.W.2d 206.

The practical difficulties involved in the securing of support by one person from a person residing in another State constitute a valid basis for granting free legal representation in such cases and denying it in cases where both persons are residents of the same State, and therefore the former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq., was not unconstitutional for granting privilege of free legal representation to dependent person when person liable to furnish support is in other State even though it denies such privilege when person liable for support is in same State. Duncan v. Smith (1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

The former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq., was not invalid for diverting public funds for benefit of private individuals, notwithstanding provisions therein for representation of petitoner by county attorney. Id.

Under former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.070, it was duty of designated legal officer known as "petitioner's representative" to represent person instituting proceeding under such Act, whether such person be a resident or a non-resident of State in which proceeding is instituted. Id.

§ 46b-187. Payment of Petitioner's Representatives.

At the close of each session of the superior court, or at such time as a presiding judge may designate, the petitioner's representative shall file with the clerk an itemized statement of expenses necessarily incurred by him during such term and the court shall allow a reasonable sum for such expenses, which shall be taxed and paid as are expenses in criminal cases. In addition to the expenses necessarily incurred, a reasonable allowance

for the services of the petitioner's representative rendered in said court shall be made by the presiding judge at the conclusion of his term.

HISTORY: (1951, Supp. § 1401b; 1953, Supp. § 2442c; 1955, Supp § 3245d; 1958 Rev., § 17.334; 1976, P.A. 76-436, § 373, eff. July 1, 1978.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-188. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent, including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (1949, Supp. § 685a; 1951, Supp. § 1399b(a); 1953, Supp. § 2440c; 1955, Supp. § 3243d; 1958 Rev., § 17.335.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where petiton for support on behalf of divorced wife for minor children of the husband residing in Massachusetts was not in the record as filed in the Maine court, it must be assumed to have complied with the requirements of the Act before transmittal to the District Court in Massachusetts. Phillips v. Phillips (1958) 146 N.E.2d 919, 336 Mass. 561.

Under Vernon's Ann. Civ. St. art. 2328b.1 et seq., laws of responding State, where individual who is allegedly liable for support resides, are to be applied. Freeland v. Freeland (Tex.Civ.App.1958) 313 S.W.2d 943.

Where suit under Code 1950, § 2088.12 et seq., which was transferred to Missouri court was brought in name of divorced wife and not in name of "obligee" who was the minor child, by a guardian, curator or next friend, and in petition there was no allegation

that plaintiff had legal custody of obligee, but there was attached to petition answers of plaintiff to some question asked by judge of Virginia court in which she stated that "divorce court" granted her custody of the child, court would treat the questions and answers as an exhibit to petition. Ivey v. Ayer (Mo. 1957) 301 S.W.2d 790.

Petition which was filed for support under R.S. 1954, ch. 167, § 1 et seq., and which alleged that obligee was 28 year old female who was unable to maintain herself, and who was likely to become a public charge, sufficiently stated a cause for relief under the Act. Rosenberg v. Rosenberg (1956) 125 A.2d 863, 152 Me.161.

In suit in Colorado by California county and by mother of child against father under West's Ann. Code Civ. Proc. § 1650 et seq., for reimbursement of funds used in support of the child, evidence was sufficient to prove allegations of complaint. Potter v. Potter (1955) 278 P.2d 1020, 131 Colo. 14.

Petition entitled "complaint for support . . ." under Code 1951, art. 89c, § 1 et seq., and docketed as a law case on law docket of circuit court, would be remanded for the removal of the case from the law to the equity court. Commonwealth of Pennsylvania v. Warren (1954) 105 A.2d 488, 204 Md 467.

An order sustaining a demurrer at law and granting a motion to quash a petition entitled "complaint for support . . ." under Code 1951, art. 89c, § 1 et seq., was not a "final judgment", and an appeal therefrom was premature and would be dismissed. Id.

In proceeding under Reciprocal Enforcement of Support Law, initiated in Connecticut against California defendant, to enforce support of minor child, initiating papers were not required to show that defendant was present in Connecticut during period for which support was sought or that plaintiff was present in Connecticut, when failure to support commenced, there being no difference in duty of support provided by the respective States. Smith v. Smith (1954) 270 P.2d 613, 125 C.A.2d 154.

In nonsupport action by divorced wife against former husband, allegations in petition as to religious faith of mother and father with names of their respective church affiliations were irrelevant and should have been stricken. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In nonsupport action by divorced wife against former husband which was originated in Connecticut and transferred to Georgia overruling of special demurrer to petition which failed to show that father was liable under Georgia L.1951, p. 107, § 1 et seq., for support of minors was error. Id.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, sufficiency of petition as against husband's objections must be determined under Georgia L. 1951, p. 107, § 1 et seq., and not under Connecticut Gen.St. 1951, § 1395b et seq. Id.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, overruling of ground of plea of abatement to effect that public defender who verified wife's petition was wife's personal attorney was not error where it did not affirmatively appear from record that such individual verified petition in capacity of personal attorney rather than as public defender. Id.

§ 46b-189. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1953, Supp. § 2443c; 1955, Supp. § 3246d; 1958 Rev., § 17-336.)

Cases

In general.

At common law, stepparent is under no obligation to support his stepchildren, but if he has assumed the parental relation, acting in loco parentis, and holds them out to the world as members of his own family, he may incur same liability for support as if they were his own children. Ladd v. Welfare Commissioner (1966) 217 A.2d 490, 3 Conn.Cir. 504.

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Proceeding against California father under West's Ann. Civ. Code, § 1675, could be brought by nonresident mother for support of nonresident minor child without appointment of guardian ad litem for child. Harmon v. Harmon (1958) 324 P.2d 901, 160 C.A.2d 47.

Where divorce decree was granted in ex parte proceeding when husband was not within jurisdiction of court that granted divorce, but child was residing with wife when decree was granted and had resided with her since that time, wife could bring proceeding under West's Ann. Civ. Code, § 1675. Id.

Petition filed by mother under Code 1950, § 20.88.12 et seq., against California father and certificate of Virginia court that petition set forth facts from which it might be determined that father owed duty of support were sufficient to support California proceedings and order for support entered by California court. Id.

§ 46b-190. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts form which it may be determined that the respondent owes a duty of support and that a court of the responding State may obain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate and (3) this part to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding

State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (1953, Supp. § 2444c; 1955, Supp. § 3247d; 1958 Rev.,§ 17.337.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Even though, according to testimony of defendant's wife, defendant's abandonment of his wife and children occurred in Maryland, it would be for courts of New Jersey, to which wife and the children had moved, to say whether such abandonment was persisted in so as to render defendant guilty of willful neglect of his children in New Jersey, and guilt or innocence of accused could not be determined in an extradition proceeding in Pennsylvania. Com. ex rel. Houser v. Seip (1956) 124 A.2d 110, 385 Pa. 545.

Where mother applied for an order directing father to make payments for support of the two children of the marriage, and record did not show with whom or where the children were residing, further hearing to develop these essential facts would be ordered. Wohlfarth v. Wohlfarth (1955) 146 N.Y.S.2d 490, 1 A.D.2d 658, appeal denied 149 N.Y.S.2d 267, 1 A.D.2d 804.

In proceeding by mother for an order directing father to make payments for the support of two children of the marriage, where it did not appear with whom or where children were residing at present time, order directing father to make payments was improper. Id.

Civil proceeding for support under West's Ann. Code Civ. Proc. § 1650 et seq., must be initiated by the person to whom a duty of support is owed in State where such dependent resides and not by the person owing a duty of support in State in which he resides. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Where wife instituted proceeding under Ark.Stats. § 34.2401 et seq. in Arkansas against divorced husband who resided in North Carolina, and hearing was had before superior court in North Carolina under G.S. § 52A.1 et seq., rights of parties were determinable in superior court in North Carolina, and cause was required to conform to North Carolina law. Mahan v. Read (1954) 83 S.E.2d 706, 240 N.C. 641.

Where Georgia trial court had jurisdiction over former husband and assumed jurisdiction on certificate of judge in Connecticut where nonsupport action by divorced wife against former husband was originated, failure of Connecticut judge to name specifically a court in Georgia in his certificate did not render proceedings in Georgia nugatory. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In proceedings brought by wife to require husband to support child, wherein respondent denied child was child of marriage, court was required to determine legitimacy of child. In re Miller (1952) 114 N.Y.S.2d 304.

In action by Arkansas wife under Ark.Stats. §§ 34-2401 to 34-2418 in which husband who lived in Pennsylvania entered personal appearance, wife could either proceed to sue on Arkansas judgment in Pennsylvania or could proceed under the terms of 62 P.S. §§ 2043.1 to 2043.19. Dean v. Dodge (1952) 250 S.W.2d 731, 220 Ark. 854.

A petition under Uniform Support of Dependents Law against husband residing in California would lie in New York City domestic relations court, since the Code Civ. Proc., §§ 1650-1681 adopted by State of California was similar to McKinney's Unconsol. Law, §§ 2111 to 2120. Hodges v. Hodges (1951) 108 N.Y.S.2d 286, 202 Misc. 71.

§ 46b-191. Costs and Fees.

A court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including, without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent, or either, shall be paid by the State. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee.

HISTORY: (1953, Supp. § 2445c; 1955, Supp. § 3248d; 1958 Rev., § 17.338.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

In proceeding initiated in California Court and transmitted to Louisiana family court under civil enforcement section of West's Ann. Code Civ. Proc. § 1650 et seq., defendant could not object because authority had been granted plaintiff to prosecute proceeding without payment of costs or giving bond therefor, but defendant would be compelled to pay costs in event he sould be condemned in the final judgment. Carpenter v. Carpenter (1956) 92 So.2d 393, 231 La 638.

General statutes governing costs apply to proceedings under former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq. Duncan v. Smith (1953) 262 S.W.2d 373, A.L.R.2d 754.

§ 46b-192. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction, it may:

(a) As an initiating State request in its certificate that the court of the responding State obain the body of the defendant by appropriate process if that is permissible under the law of the responding State; or

(b) As a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (1953, Supp. § 2446c; 1955, Supp. § 3249d; 1958 Rev., § 17.339.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-193. State Information Agency.

The director of the family division of the superior court is hereby designated as the State Information Agency under this part, and it shall be his duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiciton under this part and transmit the same to the State Information Agency of every other State which has adopted this part or a substantially similar act,

(2) To distribute, upon the adjournment of each session of the general assembly, copies of any amendments to this part and a statement of their effective date to all other State Information Agencies,

(3) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this part, and

(4) To forward to the court in this State which has jurisdiction over the obligor or his property, petitions, certificates and copies of an act similar to part I of this chapter he receives from courts or information agencies of other States.

HISTORY: (1953, Supp. § 2447c; 1955, Supp. § 3250d; 1958 Rev., § 17.340; 1967, P.A. 314, § 13; 1980, P.A. 80-180, § 2; 1983, P.A. 83-527, § 3, eff. July 1, 1984.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-194. Duty of the Court of this State as Responding State.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall:

(1) Docket the case,

(2) Notify the petitioner's representative,

(3) Set a time and place for a hearing, and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction, including issuance of summons to the respondent.

HISTORY: (1953, Supp. § 2448c; 1955, Supp. § 3251d; 1958 Rev., § 17.341.)

Cases

In general.

Doctrine of comity allows Connecticut courts to give effect to a retroactively modifiable support and alimony order of a sister State, or a modifiable prospective support and alimony order of such State, but only after affording the defendant an opportunity to raise and litigate any questions of modification that could have been raised had enforcement been sought in the courts of the State where the order was entered, even where proceeding is not brought under the Uniform Reciprocal Enforcement and Support Act. Walzer v. Walzer (1977) 376 A.2d 414, 173 Conn. 62.

Father who was summoned by Connecticut court to show cause why order prayed for by mother in petition transferred by Ohio court under Uniform Reciprocal Enforcement of Support legislation and who had opportunity to examine mother by means of deposition or written interrogatories was not deprived of due process of law by Connecticut court order for support of child in Ohio. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Jurisdiction.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsquent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where pleadings establish controverted facts, and evidence has been adduced, by interrogatories, there must be, absent default, a "hearing," of the sort provided for in McKinney's Unconsol. Laws, § 2111 et seq., and only after hearing in respondent State, and if prayer of petitioner is sustained by evidence adduced in proceeding, may court enter an order directing respondent to furnish support. Aberlin v. Aberlin (1957) 161 N.Y.S.2d 305, 3 A.D.2d 417.

Where, in wife's proceeding under Ky.Rev.Stat. 407.010 et seq., trial court, after wife's deposition was taken in Kentucky, advised husband that such deposition had been taken, and afforded opportunity to cross-examine in Kentucky or to submit interrogatories, but husband failed to take such action, he waived his right to object to use of deposition on account of his not having been notified of its taking and waived his right to cross-examine. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599.

In proceeding initiated in California Court and transmitted to Louisiana family court under civil enforcement section of LSA-R.S. 13:1641 et seq., where defendant filed answer denying liability for child support sought, a duty devolved upon plaintiff to prove

her claim with legal evidence as in ordinary suits, by means of oral testimony, interrogatories and depositions with defendant having a right to cross-examine the witness. Carpenter v. Carpenter (1956) 92 So.2d 393, 231 La. 638.

In proceeding initiated in California Court and transmitted to Louisiana family court under civil enforcement section of LSA-R.S. 13:1641 et seq., testimony of plaintiff alone given by her during hearing before California Court, at which defendant was not cited to appear and hence had no opportunity for cross-examination, amounted to nothing more than an inadmissible ex parte statement and was insufficient to sustain judgment condemning defendant to pay child support. Id.

In proceeding initiated in California Court and transmitted to Louisiana family court, under civil enforcement section of LSA-R.S. 13:1641 et seq., where certified copy of petition initiating proceeding in California courts had been filed and similar document had been served on defendant, proceeding was in compliance with statutory requirement for jurisdictional purposes, and not summary in nature. Id.

Under N.J.Stat.Ann. 2A:4-30.1 et seq., it is the obligation, not of the initiating court, but of the court in the responding State, to determine whether or not the defendant spouse is under a duty to support the plaintiff spouse; and such determination may be made by the latter court only upon the basis of evidence adduced before that court and of depositions taken on notice to defendant after it has secured jurisdiction over him through a summons or warrant. Pfueller v. Pfueller (1955) 117 A.2d 30, 37 N.J.Super. 106.

Where defendant husband does not admit charge of desertion in proceeding under N.J.Stat.Ann. 2A:4-30.1 et seq., court has open to it two alternative courses of procedure: (1) If it is feasible for wife to appear personally, notice can be given to her through initiating court to appear at specified time, at which time responding court may take her testimony and such further testimony of defendant as may be called for, or (2) If it is not feasible for her to appear personally in court, her deposition may be taken as in a civil action in superior court. Id.

Where children of parents divorced in Wyoming were removed to Colorado and parents and children had previously lived in New York where husband secured a decree of judicial separation, New York courts owed more to the decrees of the Colorado court than merely the negative duty of giving it full faith and credit, but were required to undertake the affirmative and reciprocal duty to implement its enforcement within New York and were bound, on formal request of Colorado in a proper case, to do so. Guyette v. Haley (1955) 144 N.Y.S.2d 493, 286 App.Div. 451.

Where wife filed a petition under Florida Uniform Support of Dependents Law Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

Where Florida court transmitted support proceeding by wife against husband to Pennsylvania Court of Quarter Sessions of County, where husband was allegedly domiciled, for disposition under 62 P.S. § 2043.1 et sq., and husband filed petition challenging jurisdiction of Court of Quarter Sessions, and Court of Quarter Sessions entered order dismissing proceeding, on ground that it did not have jurisdiction order was

final as to Commonwealth of Pennsylvania, and Commonwealth's appeal, taken within 36 days from time of such order, was timely. Id.

Where wife in Florida filed a petition under Florida Uniform Support of Dependents Law Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., Court of Quarter Sessions had jurisdiction. Id.

§ 46b-195. Further Duty of Responding State if Unable To Obtain Jurisdiction.

If a court of this State, acting as a responding State, is unable to obtain jurisdiciton of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the respondent or his property and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State. The local police authorities and the State police shall cooperate with the court in locating any respondent alleged by petition to be present in this State.

HISTORY: (1953, Supp. § 2449c; 1955, Supp. § 3252d; 1958 Rev., § 17.342; 1977, P.A. 77-614, § 486, eff. Jan. 1, 1979; 1977, P.A. 77-614, § 587, eff. Jan. 2, 1977; 1978, P.A. 78-303, § 85, eff. June 6, 1978.)

Cases

In general.

Doctrine of comity allows Connecticut courts to give effect to a retroactively modifiable support and alimony order of a sister State, or a modifiable prospective support and alimony order of such State, but only after affording defendant an opportunity to raise and litigate any questions of modification that could have been raised had enforcement been sought in the courts of the State where the order was entered, even where proceeding is not brought under the Uniform Reciprocal Enforcement and Support Act. Walzer v. Walzer (1977) 376 A.2d 414, 173 Conn. 62.

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-196. Investigation; Payment of Support Orders.

Family division facilities and personnel shall be made available to the court upon its request, for such investigation and report as it may require. Under the supervision and direction of the court, family division personnel shall, whenever there is a default in any duty of support established under this part, take steps to cause the defaulting party to pay the arrrearages, supervise the payment of support orders, and if necessary, bring an

application to the court for a rule requiring said part to appear before the court to show cause why such party should not be held in contempt.

HISTORY: (1953, Supp. § 2450c; 1955, Supp. § 3258d; 1958 Rev., § 17.343; 1961, P.A. 75-475, § 3; 1976, P.A. 76-436, § 370, eff. July 1, 1978; 1978, P.A. 78-280, § 26, eff. July 1, 1978; 1980, P.A. 80-180, § 3.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-197. Procedure.

The court shall conduct proceedings under this part in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed, and if the respondent enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the court in the initiating State a transcript of the official proceedings, showing the denials entered by the the respondent. Upon receipt by the court in the initiating State of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court deems proper, and the court shall make it recommendations, based on all of such proof and evidence, and shall transmit to the court in the responding State an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith. Upon the receipt of such transcript, the court in the responding State shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

HISTORY: (1949, P.A. 319, § 5; 1949, Supp. § 685a; 1951, Supp. § 1399b(f) to (i); 1953, Supp. § 2451c; 1955, Supp. § 3254d; 1958 Rev., § 17.344.)

Cases

In general.

Father who was summoned by Connecticut court to show cause why order prayed for by mother in petition transferred by Ohio court under Uniform Reciprocal Enforcement of Support legislation and who had opportunity to examine mother by means of deposition or written interogatories was not deprived of due process of law by Connecticut court order for support of child in Ohio. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Validity.

Statutes in chapter entitled "Uniform Reciprocal Enforcement of Support" are not unconstitutional as an attempt to confer extraterritorial jurisdiction on court of initating State. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

In proceeding under V.A.M.S. § 454.010 et seq., defendant did not waive his objections to constitutionality of law by waiting until offer of evidence before presenting that issue where there was no requirement under law that defendant file an answer or any other pleading, court never obtained jurisdiction of defendant until he entered his appearance and waived notice, and defendant announced that he wanted to make objections to constitutionality of law before evidence was offered so that he injected the question at earliest moment good pleading and orderly procedure would permit. Ivey v. Ayers (Mo.1957) 301 S.W.2d 790.

V.A.M.S. § 454.010 et seq., as applied to father against whom petition for support of minor child was filed in Virginia whose court under Code 1950, § 20.88.12 et seq., transmitted the petition, etc., to Missouri court, is not unconstitutional as depriving him of due process because of absence of requirement of notice to father of proceeding before Virgina court, since filing of petition in Virginia court did not result in any judgment or action taken adverse to father and court in responding State is not bound by recommendations of court in initiating State nor is it bound by proof presented before that court. Id.

Where, under the Uniform Support of Dependents Laws of New York and Connecticut, methods of bringing the complaint before the responding State by the initiating State are substantially parallel, provision of the New York Uniform Support of Dependents Law that a husband in one State is hereby declared to be liable for the support of his wife residing or found in the same State or in another State having substantially "similar" or reciprocal laws, was satisfied, and petition filed by wife, who resided in Connecticut, against husband in New York would not be dismissed. Florence v. Florence (1955) 136 N.Y.S.2d 847, 207 Misc. 177.

§ 46b-198. Order of Support.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. Support orders shall require that payments be made to the appropriate State agency of the court of the responding State.

HISTORY: (1949, P.A. 319, § 5; 1949, Supp. § 685a; 1951, Supp § 1399b(k); 1953, Supp. § 2452c; 1955, Supp. § 3255d; 1958 Rev., § 17.345; 1983, P.A. 83-527, § 4, eff. July 1, 1984.)

In general.

In action under Uniform Reciprocal Enforcement of Support Act by mother against father for support of their three minor children, court was justified in concluding that father's unemployment was voluntary and that his personal wishes to pursue his lifesyle as an unpaid homemaker could not justify his failure to furnish support for his children. Byrd v. Byrd (1980) 421 A.2d 878, 36 Conn.Sup. 601.

Father who was summoned by Connecticut court to show cause why order prayed for by mother in petition transferred by Ohio court under Uniform Reciprocal Enforcement of Support Legislation and who had opportunity to examine mother by means of deposition or written interrogatories was not deprived of due process of law by Connecticut court order for support of child in Ohio. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Jurisdiction.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in court of common pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where wife, citizen in New Jersey, obtained support order in New Jersey against her husband, citizen of Pennsylvania, following service of process upon him in New Jersey, and husband was complying with New Jersey order, wife could not maintain petition in Pennsylvania for additional support, based upon change of circumstances. Com. ex rel. Holzbaur v. Holzbaur (1958) 138 A.2d 268, 185 Pa.Super. 343.

In proceeding under G.L. (Ter.Ed.) ch. 273A, § 1 et seq., by divorced wife to require husband to support minor children residing in Maine the case could be proved by the testimony of the husband. Phillips v. Phillips (1958) 146 N.E.2d 919, 336 Mass. 561.

Denomination of child support order as "temporary" was not controlling with regard to its appealability; and where effect of order was to grant final relief which was only relief available in proceeding under McKinney's Unconsol. Laws, § 2111 et seq., it would be deemed final and appealable. Aberlin v. Aberlin (1957) 161 N.Y.S.2d 305, 3 A.D.2d 417.

McKinney's Domestic Relations Court Act, § 129, empowering court to grant temporary orders for support pending final determination applies to actions and proceedings provided for in McKinney's Domestic Relations Court Act, § 1 et seq., and is of no avail in statutory proceedings; and McKinney's Unconsol. Laws, § 2111 et seq., does not authorize an intermediate support order. Id.

The amount which court of responding estate under Idaho Code § 7.1021 et seq., will order a husband to pay for support of wife and minor children is influenced by ability of husband at that time to pay, but authority of court originally ordering payment is not afffected nor is its order modified by order of court of responding State fixing another or different sum. Despain v. Despain (1957) 300 P.2d 500, 185 Idaho 78.

While the purpose of the 1953 Florida Uniform Support of Dependents Law, Acts 1953, ch. 27996, § 1 et seq., was to secure support for "dependent wives and children"

only, Fla.Stat.Ann. § 88.011 et seq., applies to any persons to whom a duty of support is owed, and judgment of dismissal under 1953 act was not res judicata on proceedings brought under Fla.Stat.Ann. § 88.011 et seq. Thompson v. Thompson (Fla.1957) 93 So.2d 90.

Where complaint was filed by wife in Kentucky under Ky.Rev.Stat. 407.010 et seq., as initiating State, and was certified and transferred to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., and husband was present at all times in New Jersey, the application of New Jersey law to the duty of the husband to support his children in Kentucky did not run counter to the rule that no State shall directly enforce a duty to support created by the law of another State. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

Where husband and wife, who lived in New Jersey, had marital difficulties because of alleged excessive drinking of husband, and wife took the children to the home of her parents in Kentucky, and wife filed a verified complaint under Ky.Rev.Stat. 407.010 et seq., and the complaint was certified and transmitted to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., New Jersey court could enter an order requiring husband to provide for the support of the children in Kentucky without offending the Constitution or public policy of New Jersey. Id.

Where father is at all times willing to support children in New Jersey, but wife leaves State with children for purpose of obtaining a foreign divorce on grounds probably not adequate for New Jersey divorce, and using N.J.Stat.Ann. 2A:4-30.1 et seq., to obtain support for children and to avoid necessity of appearing in New Jersey court, and there is no showing that welfare of children is being served by keeping them in foreign State or that children are in need of support, wife should not be granted relief under the act. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599.

Where husband's conduct justified wife's removal to her home, with children, and children would not be served by living with husband, and children needed support, wife could maintain proceedings under N.J.Stat.Ann. 2A:4-30.1 et seq. Id.

Where, although wife had been justified in leaving State with children, husband expressed desire to visit children, and it appeared that their welfare might be advanced by permitting visitation rights, order, under N.J.Stat.Ann. 2A:4-30.1 et seq., directing husband to make support payments, was conditioned on wife's permitting husband reasonable visitation rights and custody rights during one month of summer. Id.

Reciprocal enforcement of a support order aimed at a husband's primary parental obligation to support his minor child may not be avoided or excused by resort to the immunities and privileges clause of U.S.C.A. Const. art. 4, § 2. Landes v. Landes (1956) 135 N.E.2d 562, 1 N.Y.2d 358, 1 N.Y.S.2d 14, motion denied 153 N.Y.S.2d 208, 135 N.E.2d 716, 1 N.Y.2d 827, app. dismissed 77 S.Ct. 325, 352 U.S. 948, 1 L.Ed.2d 241.

Under R.C. § 3115.10, mother was entitled to reimbursement of funds expended for the support of herself and her child between the time the father allegedly abandoned his family, and the date of trial of her action for support. Skinner v. Fasciano (Ohio App.1956) 137 N.E.2d 613.

Support decree entered by Ohio court which had jurisdiction over person of husband could not be terminated by Florida court in divorce proceeding instituted by husband upon substituted service, and therefore superior court of California had jurisdicition, based on personal service of process upon husband, to make a reasonable order for support of

former wife in a proceeding under West's Ann. Code Civ. Proc., § 1650 et seq. Gohdes v. Gohdes (1955) 286 P.2d 539, 134 C.A.2d 819.

In action to enforce prospectively and retroactively modifiable support or alimony obligations under divorce or separate maintenance decree of sister State, either party may tender and litigate any plea for modification that could be presented to court of that State where alimony or support decree was originally rendered. Worthley v. Worthley (1955) 283 P.2d 19, 44 C.2d 465, prior opinion 258 P.2d 588.

In proceedings commenced pursuant to provisons of West's Ann. Code Civ. Proc. § 1650 et seq., California court must recognize and enforce foreign alimony and support decrees, whether modifiable or not, and must afford defendant opportunity to litigate issue of modification. Id.

New Jersey separate maintenance decree being both prospectively and retroactively modifiable, California court was not constitutionally bound to enforce husband's obligations under it; but neither was it found not to enforce them. Id.

In suit in Colorado by California county and by mother of child against father under the West's Ann. Code Civ. Proc. § 1650 et seq. for reimbursement of funds used in support of the child, Texas divorce decree, in view of the fact that it was not a final judgment was not entitled to full faith and credit under the Federal Constitution. Potter v. Potter (1955) 278 P.2d 1020, 131 Colo. 14.

Where no appeal was taken from order directing husband to pay weekly amount for support of wife and child, order was res judicata as to wife's right to support. Com ex rel. Cellucci v. Cellucci (1953) 93 A.2d 861, 173 Pa.Super. 1.

Support order entered in desertion and nonsupport proceedings should not have been made retroactive. Com. ex rel. Kenny v. Kenny (1951) 82 A.2d 552, 169 Pa.Super. 152.

A wife seeking support is not held to high degree of proof required of her when seeking a divorce. Id.

§ 46b-198a. "Support Order" Defined.

For the purposes of §§ 46b-198, 46b-198b and 46b-198c "SUPPORT ORDER" means an order for alimony or child support or both.

HISTORY: (1983, P.A. 83-527, § 7, eff. July 1, 1984.)

§ 46b-198b. Registration of Support Orders from Other States.

(a) The court shall maintain a registry of support orders from other States. The obligee may register a support order from another State in a court of this State and the petitioner's representative appointed pursuant to § 46b-186 shall represent such obligee in accordance with the provisions of said section.

(b) An obligee seeking to register a support order from another State shall transmit to the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office

address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of support orders from other States. The filing constitutes registration under this part.

(c) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor, at the address given, a notice of the registration with a copy of the registered support order and the post office address of the obligee. The clerk shall also docket the case and notify the petitioner's representative of his action.

HISTORY: (1983, P.A. 83-557, § 5, eff. July 1, 1984.)

§ 46b-198c. Enforcement of Registered Support Orders.

(a) Upon registration pursuant to § 46b-198b, the registered support order from another State shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, modification, vacating or staying as a support order of this State and may be enforced and satisfied in the same manner.

(b) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a support judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

(d) Execution shall not issue on any judgment registered under the provisions of § 46b-198b for a period of twenty days from the filing thereof and no steps shall be taken to enforce such judgment until proof of service has been filed with the court.

HISTORY: (1983, P.A. 83-627, § 6, eff. July 1, 1984.)

§ 46b-199. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (1949, P.A. 319, § 5; 1949, Supp. § 685a; 1951, Supp. § 1399b(k); 1953, Supp. § 2453c; 1955, Supp., § 3256d; 1958 Rev., § 17.346.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-200. Additional Court Powers.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms, conditions and probation as the court deems proper to assure compliance with its orders, and in particular:

(a) To require the respondent to furnish recognizance to the State of Connecticut in the form of a cash deposit or bond of such character and in such amount as the court deems proper to assure payment of any amount required to be paid by the respondent. Upon failure of the respondent to post such bond, the court may remand the respondent to a community correctional center until he has complied with such order;

(b) Upon failure of the respondent to comply with its orders, to order the bond forfeited and the proceeds thereof paid to the petitioner or the obligee, as the court may determine;

(c) To require the respondent to make payments at specified intervals to the Bureau of the Court and to report personally to such clerk at such times as may be deemed necessary;

(d) To punish the respondent who violates any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable to the court;

(e) In addition to or in lieu of such contempt proceedings, the court, upon a finding that any person has failed to obey any order made hereunder, may issue an order directing that execution issue as provided in § 52-362.

HISTORY: (1953, Supp. § 2454c; 1955, Supp. § 3257d; 1957, P.A. 631; 1958 Rev., § 17.347; 1961, P.A. 475, § 4; 1980, P.A. 80-180, § 4.)

Cases

In general.

A judgment for child support rendered in court of a foreign State may be modified as to future support by a court of competent jurisdiction in Connecticut if the court of the foreign State has a power under the law of that State to make such a modification. Proctor v. Sachner (1956) 118 A.2d 621, 143 Conn. 9.

Where separation agreement provided for $5 weekly payment for child support until and unless otherwise provided by order of court with proper jurisdiction of subject matter and parties and an Ohio divorce decree incorporated agreement, Connecticut court in

proceeding on transfer of petition by exemplified copy from Ohio court under Uniform Reciprocal Enforcement of Support legislation had power to order 60 monthly payments though divorce decree had not been modified. Id.

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to foreign decree of divorce and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

An order of District Court directing father to furnish recognizance under R.R.S.1943, § 42.715 will not be disturbed on appeal, in absence of showing an abuse of discretion by trial court. Rice v. Rice. (1958) 87 N.W.2d 408, 165 Neb. 778.

Where evidence showed that assets of father within jurisdiction of court were personal property which could be disposed of for purpose of defeating court's order, trial court did not abuse discretion, lodged with it by R.R.S. 1943, § 42.715, in requiring recognizance to be given in amount of $1,500. Id.

Support of dependents, obtained through judicial compulsion, is not ordered on unilateral appraisal of husband's income and assets but on showing of need, even during marriage, and amount is fixed having due regard to the party's means and circumstances. Phillips v. Phillips (1956) 1 A.D.2d 393, 150 N.Y.S.2d 646.

Where the proceedings under West's Ann. Code Civ. Proc., § 1650 et seq., and McKinney's Unconsol. Laws, § 2111 et seq., are both held in the civil courts, and the only penalty for the failure to comply with the courts' orders is punishment for contempt, McKinney's Unconsol. Laws, § 2111 et seq., providing for enforcement of West's Ann. Code Civ. Proc., § 1650 et seq., does not inhibit in any way the constitutional safeguards erected to assure due process to one charged with crime. Landes v. Landes (1956) 135 N.E.2d 562, 1 N.Y.2d 358.

Decree of divorce obtained by wife in Colorado, which contained no provision for support for minor children, did not constitute contract which relieved divorced husband from duty to support such children, and order of California court, under West's Ann. Code Civ. Proc., § 1650 et seq., ordering divorced husband from duty to pay support for such minor children would not be impairment of obligation of contract in violation of Federal Constitution. Smith v. Smith (1955) 281 P.2d 274, 131 C.A.2d 764.

Where wife filed a petition under Florida Uniform Support of Dependents Law, Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

While full faith and credit clause of U.S.C.A.Const. art. 4, § 1, does not obligate courts of one State to enforce a final decree of another State for separate maintenance with respect to future payments, under Code Civ. Proc. § 1650 et seq., and general

principles of comity, California superior court could in its discretion issue an order requiring husband to make weekly payments for support of wife in accordance with New Jersey separate maintenance decree until modification of such decree by court of competent jurisdiction. Worthley v. Worthley (1954) 267 P.2d 23, vacated on other grounds 283 P.2d 19, 44 C.2d 465.

Authority for court to require defendant to furnish bond contained in civil enforcement sections of LSA-R.S. 13:1641 et seq., is granted to provide additional means of securing performance by defaulting parents of their obligations, and requirement of bond does not transform such proceeding into criminal prosecution. Freeman v. Freeman (1954) 76 So.2d 414, 226 La. 410.

In proceeding under civil enforcement sections of LSA-R.S. 13:1641 et seq., wherein rule issued to compel respondent to show why he should not be compelled to provide support for his children, action of trial court in judging him guilty of contempt was not responsive to rule issued. Id.

There is no procedure recognized in Kentucky for probation except after conviction of a criminal offense, and there is no machinery for supervising the kind of probation contemplated by the former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq., and no measure or standard of punishment for violation of probation, and therefor the provisions for probation, and for punishment as for violation of probation, were inapplicable in Kentucky. Duncan v. Smith (1953) 262 S.W.2d 373.

Where Texas court entered contempt judgment, which ordered relator confined in jail until he paid, among other things, $500 attorney's fee taxed as costs, attorney's fee was but part of procedural remedy for enforcing substantive rights arising from California court's order requiring relator to make certain support payments for benefit of his two children, and fee allowed, as well as other costs of proceeding was incidental to and part of payments necessary for support to minors and, therefore, was properly allowed. Ex parte Helms (1953) 259 S.W.2d 184, 152 Tex. 480.

In contempt proceeding to enforce support payments, defendant's constitutional freedom from imprisonment for debt is not violated by judgment which requires defendant to remain in jail until an attorney's fee allowed complainant and all costs are paid. Id.

Comity and public policy require that remedy of contempt be available in courts of Texas to require father to make payments which he has been ordered by court of sister State to make for support of minor child where such father has subsequently become resident of Texas. Guercia v. Guercia (1951) 241 S.W.2d 297, 150 Tex. 418.

§ 46b-201. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the bureau of the court:

(a) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(b) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (1951, Supp. § 1399b(n); 1953, Supp. § 2455c; 1955, Supp. § 3258d; 1958 Rev., § 17.348.)

Cases

Jurisdiction.

Superior court did not have exlusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Decisions in other States.

Where suit under Code 1950, § 20.88.12 et seq., which was transferred to Missouri court was brought in name of divorced wife and not in name of "obligee" who was the minor child, by a guardian, curator or next friend, and in petition there was no allegation that plaintiff had legal custody of obligee, but there was attached to petition answers of plaintiff to some question asked by judge of Virginia court in which she stated that "divorce court" granted her custody of the child, court would treat the questions and answers as an exhibit to petition. Ivey v. Ayers (Mo.1957) 301 S.W.2d 790.

Where divorced wife in preparing petition for support followed a form designed for situation where support is sought from husband and father for wife and family but was apparent that plaintiff intended to seek support only for her minor child, court would treat as surplusage those allegations in petition which indicated that plaintiff was seeking support for herself. Id.

Provision in former Uniform Support of Dependents Law, Ky.Rev.Stat. 407.060, for support payments to be made to probation department or bureau of court are not mandatory, and it is within discretion of court to direct that such payments be made directly to court or to clerk for forwarding to initiating State. Duncan v. Smith (1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

§ 46b-202. Additional Duty of the Court of this State when Action as an Initiating State.

The court of this State when acting as an initiating State shall have the duty, which may be carried out through the bureau of the court, to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

HISTORY: (1951, Supp. § 1399b(p); 1953, Supp. § 2456c; 1955, Supp. § 3259d, 1958 Rev., § 17.349.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce and such action could be

maintained in Court of Commons Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-203. Husband and Wife Privilege Inapplicable.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (1953, Supp. § 2457c; 1953, Supp. § 3260d, 1958 Rev., § 17.350.)

§ 46b-204. Application of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce, dissolution of marriage or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (1953, Supp. § 2458c; 1955, Supp. § 3261d; 1958 Rev., § 17-351, 1973, P.A. 73-373, § 35.)

Cases

Jurisdiction.

Superior court did not have exclusive jurisdiction of matters involving support for minor children subsequent to a foreign decree of divorce, and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

Modification of divorce judgment.

Even if directive issued by Connecticut Court of Common Pleas in response to Uniform Support of Dependents Law petition, which orally directed former husband to continue making support payments in reduced amount, had been reduced to written order, it could not, under Connecticut law, have constituted a modification of divorce judgment. Nichols v. Bardua (1980) 424 N.Y.S.2d 288, 74 A.D.2d 566.

Uniform Support of Dependents Law proceedings did no in any way impair or reduce former husband's obligation to provide child support in conformance with provisions of divorce judgment. Id.

§ 46b-205. Temporary Order.

At any time after the filing of a petition for support and before final hearing, the court may, on satisfactory affidavits or other proofs, order a temporary allowance pending a hearing on the merits of the petition.

HISTORY: (1951, Supp. § 1404b, 1953 Supp. § 2460c; 1955 Supp. § 3262d; 1958 Rev., § 17.352.)

Jurisdiction.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsequent to a foreign decree of divorce and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta (1972) 294 A.2d 87, 29 Conn.Sup. 498.

§ 46b-206. Appeal.

Any respondent in an action brought under the provisions of this part shall have the right of appeal as in civil actions. Any order for support made by the court shall not be affected by an appeal but shall continue in effect until the appeal is decided and thereafter, if the appeal is denied, until changed by further order of the court.

HISTORY: (1951, Supp. § 1405b; 1953, Supp. § 2461c; 1955, Supp. § 3263d; 1958 Rev., § 17.353.)

§ 46b-207. Support Services.

The court is authorized to establish and maintain such family division offices as it determines are necessary for the proper handling of the administrative details incident to proceedings under this part and may apoint such personnel as necessary for the proper administration of the nonjudicial functions of proceedings under this part.

HISTORY: (1953, Supp. § 2462c; 1955, Supp. § 3264d; 1958 Rev., § 17.354; 1980, P.A. 80-180, § 5.)

§ 46b-208. Powers of Support Service Investigators.

The support service investigators of the family division of superior court shall, while acting within the scope of their duties as such, pursuant to matters under this part, have (1) all the powers conferred on State policemen, (2) the powers of service and of execution of summons and wage executions, the execution of arrest warrants, the transfer of persons arrested or sentenced to community correctional centers and the conduct of investigations and (3) the power to serve and execute a capias.

HISTORY: (1958 Rev., § 17.354a; 1972, P.A. 188, § 4; 1976, P.A. 76-17, § 2; 1976, P.A. 76-436, § 587, eff July 1, 1978; 1980, P.A. 80-180, § 6.)

§ 46b-209. Uniformity of Interpretation.

This part shall be so interpreted and construed as to effectuate its general purpose to make unifrom the laws of the States which enact it.

HISTORY: (1951, Supp. § 1403b; 1953, Supp. § 2459c; 1955, Supp. § 3265d; 1958 Rev., § 17.355.)

Cases

In general.

Doctrine of comity allows Connecticut courts to give effect to a retroactively modifiable support and alimony order of a sister State, or a modifiable prospective support and alimony order of such State, but only after affording the defendant an opportunity to raise and litigate any questions of modificaiton that could have been raised had enforcement been sought in the courts of the State where the order was entered, even where proceeding is not brought under the Uniform Reciprocal Enforcement and Support Act. Walzer v. Walzer (1977) 376 A.2d 414, 173 Conn. 62.

§ 46b-210. Proceedings Not Stayed by Other Pending Actions.

No proceeding under this part shall be stayed solely because of the existence of a pending action for divorce, separation, annulment, dissolution or habeas corpus or a custody proceeding.

HISTORY: (1958 Rev., § 17.355a; 1961, P.A. 475, § 5.)

§ 46b-211. Participation in Proceedings Not To Confer Jurisdiciton for Other Proceedings.

Participation in any proceedings under this part shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (1958 Rev., § 17.355b, 1961, P.A. 475, § 6.)

Cases

In general.

In proceeding by mother against father under Uniform Reciprocal Enforcement of Support Act for support of their three minor children, evidence that father had remarried and was not seeking employment since he and his wife had arranged that he would stay home and do the housework was sufficient to constitute a substantial change from situation which existed at time of the uncontested dissolution decree entered two months earlier, and thus was sufficient to sustain order that father pay $10 per week for support of each of his children. Byrd v. Byrd (1980) 421 A.2d 878, 36 Conn.Sup. 601.

Superior court did not have exclusive jurisdiciton of matters involving support for minor children subsequent to a foreign decree of divorce and such action could be maintained in Court of Common Pleas. Jakaboski v. Guinta. (1972) 294 A.2d 87, 29 Conn.Supp. 498.

Comity.

Doctrine of comity allows Connecticut courts to give effect to a retroactively modifiable support and alimony order of a sister State, or a modifiable prospective support and alimony order of such State, but only after affording the defendant an opportunity to raise and litigate any questions of modification that could have been raised

had enforcement been sought in the courts of the State where the order was entered, even where proceeding is not brought under the Uniform Reciprocal Enforcement and Support Act. Walzer v. Walzer (1977) 376 A.2d 414, 173 Conn. 62.

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DELAWARE

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Subchapter I: General Provisions

§ 601. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (13 D.C. 1953, § 601; 50 D.L., ch. 219, § 1.)

Cases

Service by ordinary mail does not give family court jurisdiction. As neither § 501 of this title nor this section makes provision for substitute service, service by ordinary mail does not give the family court jurisdiction over an individual or authority to enter an order. Rosemary K. v. Kevin D.C., Del.Fam.Ct., 422 A.2d 1272 (1980).

Process depends on proceeding under chapter. Although a defendant may state that he was not personally served, and that he has received no process under this chapter, where the plaintiff elects not to proceed under this chapter, no process would issue under it. Sevison v. Sevison, Del.Super., 396 A.2d 178 (1978).

As to future payments required by a foreign divorce decree, a plaintiff may proceed under the Uniform Reciprocal Enforcement of Support Act which has been adopted in Delaware. Potter v. Potter, Del.Ct., 251 A.2d 578 (1968).

§ 602. Definitions.

As used in this chapter:

(1) "COURT" means the family court of the State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise, and includes the duty of paying arrearages of support past due and unpaid.

(3) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(4) "LAW" includes both common and statute law.

(5) "OBLIGEE" means any person to whom a duty of support is owed.

(6) "OBLIGOR" means any person owing a duty of support.

(7) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(8) "STATE" includes any State, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted, including any province or territory of the Dominion of Canada or any foreign country.

(9) "SUPPORT ORDER" means any judgment, decree or order or support in favor of an obligee, whether temporary or final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (13 D.C. 1953, § 602, 50 D.L., ch. 219, § 1; 60 D.L., ch. 643, §§ 1-3.)

§ 603. Remedies in Addition to Those Provided Elsewhere.

The remedies provided in subchapter III of this chapter are in addition to and not in substitution for any other remedies.

HISTORY: (13 D.C. 1953, § 603; 50 D.L., ch. 219, § 1.)

§ 604. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 620 of this title, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (13 D.C. 1953, § 604; 50 D.L., ch. 219, § 1.)

Subchapter II: Criminal Enforcement

§ 610. Interstate Rendition.

The Governor (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State. The provision for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (13 D.C. 1953, § 610; 50 D.L., ch. 219, § 1.)

§ 611. Relief from Provisions of § 610.

Any obligor contemplated by § 610 of this title, who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved

of extradition for desertion or nonsupport entered in the courts of this State during the *period of such compliance.*

HISTORY: (13 D.C. 1953, § 611, 50 D.L., ch. 219, § 1.)

Subchapter III: Civil Enforcement

§ 620. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (13 D.C. 1953, § 620; 50 D.L., ch. 219, § 1.)

§ 621. Remedies of State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (13 D.C. 1953, § 621; 50 D.L., ch. 219, § 1.)

§ 622. Enforcement of Duties.

All duties of support under this chapter are enforceable by petitioner irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the family court of the State or in a statewide Domestic Relations court by whatever name, if such a court should be established.

HISTORY: (13 D.C. 1953, § 622; 50 D.L., ch. 219, § 1.)

§ 623. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints or Social Security number.

HISTORY: (13 D.C. 1953, § 623; 50 D.L., ch. 219, § 1.)

§ 624. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person or agency having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (13 D.C. 1953, § 624; 50 D.L., ch. 219, § 1.)

§ 625. Duty of Court of this State as Initiating State.

If the court of this State finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause 3 copies of (1) the petition, (2) its certificate and (3) this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (13 D.C. 1953, § 625, 50 D.L., ch. 219, § 1.)

§ 626. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may:

(1) As an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (13 D.C. 1953, § 626; 50 D.L., ch. 219, § 1.)

§ 627. State Information Agency.

The Department of Health and Social Services is hereby designated as the State Information Agency under this chapter and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law; and

(2) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

HISTORY: (13 D.C. 1953, § 627; 50 D.L., ch. 219, § 1.)

§ 628. Duty of the Court of this State as Responding State.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall:

(1) Docket the case;

(2) Set a time and place for a hearing; and

(3) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (13 D.C. 1953, § 628, 50 D.L., ch. 219, § 1.)

§ 629. Further Duty of Responding Court.

(a) If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State.

(b) If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property because the defendant is found to be in another county of the State, the papers in the case shall be transferred to the court having jurisdiction over the defendant.

HISTORY: (13 D.C. 1953, § 629; 50 D.L., ch. 219, § 1.)

§ 630. Order of Support; Proceedings; Continuance of Hearing for Additional Evidence; Adjudication of Paternity.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, or the court itself, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (13 D.C. 1953, § 630; 50 D.L., ch. 219, § 1, 60 D.L., ch. 643, § 4.)

"Reimbursement," as used in this section, is not intended to by synonymous with the word "arrearages," as used in § 9 of the Uniform Reciprocal Enforcement of Support Act. Ainbender v. Ainbender, Del.Super., 344 A.2d 263 (1975).

Amount of reimbursement awarded should be based on evidence submitted setting forth the expenses incurred in supporting the child during the period defendant failed to comply with the out-of-State support order. Id.

§ 631. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (13 D.C. 1953, § 631; 50 D.L., ch. 219, § 1.)

§ 632. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) To require the defendant to make payments at specified intervals to the court and to report personally to the court at such times as may be deemed necessary;

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (13 D.C. 1953, § 632, 50 D.L., ch. 219, § 1.)

§ 633. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (13 D.C. 1953, § 633; 50 D.L., ch. 219, § 1.)

§ 634. Additional Duty of the Court of this State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (13 D.C. 1953, § 634; 50 D.L., ch. 219, § 1.)

§ 635. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (13 D.C. 1953, § 635; 50 D.L., ch. 219, § 1.)

§ 636. Evidence.

The rules of evidence applicable to marital proceedings generally shall be applicable to proceedings under this subchapter.

HISTORY: (13 D.C. 1953, § 636; 50 D.L., ch. 219, § 1.)

§ 637. Application of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts, accruing or accrued, for the same period under both.

HISTORY: (13 D.C. 1953, § 637; 50 D.L., ch. 219, § 1.)

Cases

Design of section. This section is designed merely to prevent duplication of payment. Ainbender v. Ainbender, Del.Super., 344 A.2d 263 (1975).

The original order of support rendered in the court of the initiating State is unaffected by the orders subsequently rendered in another State under the Uniform Reciprocal Enforcement of Support Act, except to the extent that payments made pursuant to one must be credited against payments accruing or accrued under the other for the same period or periods. Id.

"Either order", as used in this section, indicates that both orders are valid. Id.

This section in no way limits the ability of the responding State to order support payments in an amount in excess of the original order. Id.

§ 638. Effect of Participation in Proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdicition of any of the parties thereto in any other proceeding.

HISTORY: (13 D.C. 1953, § 638; 50 D.L., ch. 219, § 1.)

§ 639. Foreign Support Orders.

(a) Registration of foreign support orders permitted. An obligee may register a foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided. The Chief Judge of the family court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

(b) Registration procedure.

(1) An obligee seeking to register a foreign support order in a court of this State shall transmit to the Chief Judge of the family court the following:

a. One certified copy of the order with all modifications thereof;

b. One copy of the reciprocal enforcement of support act of the State in which the order was made; and

c. A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and address of obligor, the amount of support remaining unpaid and a list of States in which the order is registered. Upon receipt of these documents the Chief Judge of the family court, without payment of a recording fee or other costs to the obligee, shall record therein in the Registry of Foreign Support Orders. The recording constitutes registration under this section.

(2) Within ten days after the registration, the clerk of the court shall send by certified or registered mail to the obligor, at the address given at registration, a copy of the registered support order and the post office address of the obligee. The clerk of the court shall docket the case. The court shall proceed diligently to enforce the order.

(c) Effect of registration; enforcement procedure.

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It shall have the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order or this State and may be enforced and satisfied in like manner.

(2) The obligor shall have 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or

the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period, if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (60 D.L., ch. 643, § 5.)

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§ 30-301. Purposes; Effective Date.

The following provisions to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law in respect thereto, shall be in effect in the District of Columbia on and after the effective date of this chapter.

HISTORY: (July 10, 1957, 71 Stat. 285, P.L. 85-94, § 1; 1973 Ed., § 30-301.)

§ 30-302. Definitions.

As used in this chapter, unless the context requires otherwise:

(1) "STATE" includes any State, territory, or possession of the United States and the Commonwealth of Puerto Rico and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the Family Division of the Superior Court and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "DUTY OF SUPPORT" includes:

(A) Any duty of support imposed by statute or by common law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise;

(B) Any duty of reimbursement imposed by law for moneys expended by a State or a political subdivision or an agency thereof for support, including institutional care; and

(C) The duty imposed by § 30-320.

(6) "DEPENDENT" means any person who is in need of and entitled to support from a person legally liable for such support.

(7) "PLAINTIFF" means any person or any State or political subdivision or agency thereof, commencing a proceeding pursuant to this or a similar reciprocal law, whether on his or its own behalf, or on behalf of a dependent as herein defined.

(8) "DEFENDANT" means any person owing a duty of support, against whom a proceeding is commenced pursuant to this chapter or a similar reciprocal act.

HISTORY: (July 10, 1957, 71 Stat. 285, P.L. 85-94, § 2; July 8, 1963, 77 Stat. 77, P.L. 88-60, § 1; July 29, 1970, 84 Stat. 578, P.L. 91-358, title 1, § 159(f)(1); 1973 Ed., § 30-302.)

Cases

District required to make independent determination of duty of support.

Under the Uniform Reciprocal Enforcement of Support Act, the District of Columbia, as the "responding State" is required to make an independent determination of whether appellant owes a duty of support to appellee; that determination is to be made pursuant to the law of any State in which the defendant was present during the period for which support is sought. Rittenhouse v. Rittenhouse, 461 A.2d 465 (D.C.App., 1983).

Cited in Harris v. Kinard, 443 A.2d 25 (D.C.App., 1982).

"Duty of support" does not encompass arrearages.

Although the 1968 Model Act for the Uniform Reciprocal Enforcement of Support Act expressly provides that a duty of support includes the duty to pay arrearages, the District of Columbia has never adopted this revision, and there is nothing in the definition of the "duty of support" encompassing arrearages. Schlecht v. Schlecht, App.D.C., 387 A.2d 575 (1978).

Duty of support incident to divorce proceeding.

Although a couple settled their join property rights and obligations prior to receiving a divorce decree from a Colorado court, the duty of support imposed by that decree was incident to the divorce proceeding and hence enforceable under the Uniform Support Act. Schlecht v. Schlecht, App.D.C., 387 A.2d 575 (1978).

Effect of mother's desertion.

A mother's alleged desertion of the father does not relieve him from obligations of supporting their minor children. Edmonds v. Edmonds, App.D.C., 146 A.2d 774 (1958).

Husband not obliged to provide child support.

Since the husband did not intent that an in loco parentis relation should continue during separation as to child of wife by her former marriage, he is not obliged to provide for the child's support. Jackson v. Jackson, App.D.C., 278 A.2d 114 (1971).

Enforcement of child support and alimony order not based on prior judgment.

Although a Maryland court order for child support and alimony was not enforceable in the District under the full faith and credit clause of the Constitution due to the potentiality under Mayland law for modification or cancellation, it was enforceable under the Uniform Support Act, the basis of which is not a prior judgment but rather the duty to support. Schlecht v. Shlecht, App.D.C., 387 A.2d 575 (1978).

District determination of support owed under chapter.

When a mother's petition in a reciprocal enforcement of support proceeding was forwarded to the District that jurisdiction had to determine under its local statute whether the father owed duty of support and, if so, the amount he should be required to pay. Prager v. Smith, App.D.C., 195 A.2d 257 (1963).

Judgment for additional support does not conflict with foreign divorce decree.

Judgment, under this chapter, requiring the husband to make additional support payments until child reached age 18, was not in conflict with doctrines of res judicata or full faith and credit regarding Michigan divorce decree which required support payments only until age 17. Howze v. Howze, App.D.C., 225 A.2d 477, appeal dismissed, 385 F.2d 986 (D.C.Cir., 1967).

Cited in Britt v. Britt, App.D.C., 153 A.2d 644 (1959); Jackson v. Jackson, App.D.C., 187 A.2d 704 (1963).

§ 30-303. Existing Remedies Preserved.

The civil remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-94, § 3, 1973 Ed., § 30-303.)

Cases

Later action not precluded.

Award for separate maintenance and support for minor children obtained under this chapter does not preclude later statutory action for maintenance and support. Figliozzi v. Figliozzi, App.D.C., 173 A.2d 904 (1961).

Additional support following satisfaction of divorce decree.

Under this chapter, a wife, who has obtained a foreign divorce, may petition for additional support after the divorce decree has been fully satisfied. Howze v. Howze, App.D.C., 225 A.2d 477, app. dismissed, 385 F.2d 986 (D.C.Cir., 1967.)

Maryland order enforceable under Uniform Act but not under full faith and credit.

Although a Maryland court order for child support and alimony would not be enforceable in the District under the full faith and credit clause of the Constitution due to the potentiality under Maryland law for modification or cancellation, it was enforceable under the Uniform act, the basis of which is not a prior judgment but rather the duty to support. Schlecht v. Schlecht, App.D.C., 387 A.2d 575 (1978).

Cited in Scott v. Scott, 382 F.2d 461 (D.C.Cir., 1967.)

§ 30-304. Extent of Duties of Support.

Duties of support enforcible under this chapter are those imposed under the laws of any State in which the defendant was present during the period for which support is sought, or in which the dependent was present when the failure to support commenced or where the dependent is when the failure to support continues. The defendant shall be presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-94, § 4; 1973 Ed., § 30-304.)

Cases

District required to make independent determination of duty of support.

Under the Uniform Reciprocal Enforcement of Support Act, the District of Columbia, as the "responding State" is required to make an independent determination of whether appellant owes a duty of support to appellee; that determination is to be made pursuant to the law of any State in which the defendant was present during the period for which support is sought. Rittenhouse v. Rittenhouse, 461 A.2d 465 (D.C.App., 1983).

Father's complaints concerning application of law of his domicile not entertained.

A father cannot be heard to complain that the application of the law of the jurisdiction in which he is domiciled violates his right to equal protection of the law and his right to due process of law. Id.

Cited in Harris v. Kinard, 443 A.2d 25 (D.C.App., 1982).

Enforcible duties of support include those imposed or imposable under laws of any State where the obligor was present during period for which support was sought. Howze v. Howze, App.D.C., 225 A.2d 477, app. dismissed, 385 F.2d 986 (D.C.Cir., 1967.)

Natural father's duty to support his minor children is a duty imposed by law and is not relieved by personal disputes between contesting parents. Prager v. Smith, D.C., 195 A.2d 257 (1963).

Husband not obliged to provide child support.

Since the husband did not intend that an in loco parentis relation should continue during separation as to child of wife by her former marriage, he is not obliged to provide for the child's support. Jackson v. Jackson, App.D.C., 278 A.2d 114 (1971).

Effect of mother's desertion.

A mother's alleged desertion of the father does not relieve him from the obligation of supporting their minor children. Edmonds v. Edmonds, App.D.C., 146 A.2d 774 (1958).

Cited in Cobbe v. Cobbe, App.D.C., 163 A.2d 333 (1960); Norton v. Norton, App.D.C., 298 A.2d 514 (1972); Watson v. Dreadin, App.D.C., 309 A.2d 493 (1973), cert. den., 415 U.S. 959, 94 S.Ct. 1488, 39 L. Ed. 2d 574 (1974).

§ 30-305. Remedies of a State Furnishing Support or Institutional Care.

Whenever any State or a political subdivision or agency thereof has furnished, or is furnishing support or institutional care to a dependent, it shall for the purposes of securing reimbursement of past expenditures and of obtaining continuing support, have the same right to invoke the provisions of this chapter as the dependent to whom such support or care was furnished, or is being furnished.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-94, § 5; 1973 Ed., § 30-305.)

§ 30-306. Commencement of Proceedings; Jurisdiction of Superior Court.

Proceedings to enforce duties of support initiated by the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter is vested in the family division of the superior court of the District of Columbia which shall have all power and authority heretofore vested in the Domestic Relations Branch of the District of Columbia Court of General Sessions.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-84, § 6; July 8, 1963, 77 Stat. 77, P.L. 80-60, § 1; July 29, 1970, 84 Stat. 586, P.L. 91-358, title 1, § 165(D); 1973 Ed., § 30-306.)

Cases

Husband has the duty to support his wife after they had separated.

In absence of proof that the separation was due to her misconduct. Novak v. Novak, App.D.C., 190 A.2d 266 (1963).

Statute of limitations period of § 16-2342 is not applicable to Uniform Reciprocal Enforcement of Support Act petitions. Harris v. Kinard, App.D.C., 443 A.2d 25 (1982).

Authority to award attorney's fees.

In a proceeding under this chapter, by a wife, residing in Maryland, for an order requring the husband, a resident of the District of Columbia, to support children, he family division of the superior court for the District of Columbia had the power to award a counsel fee to the wife's court-appointed attorney. Britt v. Britt, App.D.C., 153 A2d 644 (1959).

Cited in Prager v. Smith, App.D.C., 195 A.2d 257 (1963).

§ 30-307. Complaint; Verification; Contents; Attachments.

The complaint shall be verified and shall state the name and, so far as known tothe plaintiff, the address and circumstances of the defendant and of the dependents for wlom the duty of support is sought to be enforced, and all other pertinent facts necessary to enable the Court to determine whether a duty of support exists on the part of the defendant. The plaintiff may include in or attach to the complaint any information wich may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of

his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-94, § 7; 1973 Ed., § 30-307.)

§ 30-308. Representation of Plaintiff by Corporation Counsel or Private Counsel.

In any instance in which the corporation counsel of the District of Columbia is satisfied that a public support burden has been incurred or is threatened, it shall be his duty to represent the plaintiff in any proceedings arising under this chapter or a similar reciprocal act. In all other cases, the Court may, in its discretion, appoint private counsel to represent the plantif: Provided, that the plaintiff may be represented by private counsel in any proceedings under this chapter at his own expense.

HISTORY: (July 10, 1957, 71 Stat. 286, P.L. 85-94, § 8; 1973 Ed., § 30-308.)

Cases

Support proceedings may be instituted regardless of custody decree.

A person may institute proceedings for a minor for support under this chapter, regardless of fact that a decree, granting custody to another, is outstanding. Cobbe v. Cobbe, App.D.C., 163 A.2d 333 (1960). Grandmother's standing unchallenged. Mother, from whom support for child was sought, could not challenge standing of grandmother, who had been granted custody of child under a preliminary order of court, to initiate the support proceedings. Watson v. Dreadin, App.D.C., 309 A.2d 493 (1973), cert. den., 415 U.S. 959, 94 S.Ct. 1488, 39 L. Ed. 2d 574 (1974).

§ 30-309. Complaint on Behalf of Minor Dependent.

A complaint on behalf of a minor dependent may be brought by any person or agency as next friend of the minor, regardless of whether such person or agency has been appointed guardian of such minor.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 9; 1973 Ed., § 30-309.)

Cases

Support proceedings may be instituted regardless of custody decree.

A person may institute proceedings for a minor for support under this chapter, regardless of fact that a decree, granting custody to another, is outstanding. Cobbe v. Cobbe, 163 A.2d 333 (D.C.App., 1960).

Grandmother's standing unchallenged.

Mother, from whom support for child was sought, could not challenge standing of grandmother, who had been granted custody of child under a preliminary order of court, to initiate the support proceedings. Watson v. Dreadin, 309 A.2d 493 (D.C.App., 1973), cert. den., 415 U.S. 959, 94 S.Ct. 1488, 39 L. Ed.2d 574 (D.C.App., 1974).

§ 30-310. Duty of Court When District Is Initiating State.

If the court finds that a complaint initiated in the District of Columbia sets forth facts from which it appears that the defendant owes a duty of support, as defined in this chapter, and that a court of a responding State may obtain jurisdiction of the defendant, it shall so certify and shall cause to be transmitted to the court in the responding State, 3 copies of its certificate, 3 certified copies of the complaint, and 3 copies of this chapter.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 10; 1973 Ed., § 30-310.)

Cases

Cited in Harris v. Kinard, 443 A.2d 25 (D.C.App., 1982). Cited in Cobbe v. Cobbe, App.D.C., 163 A.2d 333 (1960).

§ 30-311. Fees and Costs To Accompany Complaint; Waiver of Payment.

The complaint, when initiated in the District of Columbia, shall be accompanied by such fees and costs as may be required by the Court as well as by the court of the responding State; Provided, that the Court, whether the District of Columbia be the initiating or the responding State, may in its discretion direct that payment or prepayment of any part or all fees and costs incurred in the District of Columbia be waived upon the filing of an affidavit representing that the plaintiff is unable to pay the same: Provided further, that the Court shall direct waiver of payment or prepayment of such fees and costs whenever the plaintiff is a State having a similar provision for waiver of fees, or a political subdivision or agency thereof. Nothing in this section shall be construed to deprive the Court of its discretion to assess costs and fees.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 11; 1973 Ed., § 30.311.)

§ 30-312. Flight of Defendant from Jurisdiction of Responding State.

When the court has reason to believe that the defendant may flee the jurisdiction of the responding State, it may:

(1) As the court of the initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(2) As the court of a responding State, obtain the body of the defendant by any appropriate process.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 12; 1973 Ed., § 30-312.)

§ 30-313. Duties of Corporation Counsel.

The corporation counsel of the District of Columbia is hereby designated as the reciprocal information agent under this chapter and it shall be his duty to transmit a copy of this chapter and any subsequent changes therein to the State Information Agency of every other State which has adopted this or a substantially similar act, and to maintain a

registry of the names and addresses of the courts having jurisdiction of such proceedings in other States.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 13; 1973 Ed., § 30-313.)

§ 30-314. Duty of Court When District Is Responding State.

(a) When the court receives from the court of an initiating State certified copies of a complaint or other proceedings containing the essential allegations of a complaint, under whatever name it may be known, and a certificate similar to that required by § 30-310, it shall docket the case and refer the matter to the corporation counsel, or to private counsel, if appropriate, for such further action as may be necessary to obtain jurisdiction of the defendant in order to carry out the provisions of this chapter.

(b) If the court is unable to obtain jurisdiction of the defendant due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall hold the case pending receipt of more accurate information or an amended complaint from the court in the initiating State.

HISTORY: (July 10, 1957, 71 Stat. 287, P.L. 85-94, § 14; 1973 Ed., § 30-314.)

Cases

Due process not denied.

This chapter did not deny the mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where the mother was provided with notice of the proceeding in the responding court and was given opportunity to be heard in the responding court. Watson v. Dreadin, App.D.C., 309 A.2d 493 (1973), cert. den., 415 U.S. 959, 94 S.Ct. 1488, 39 L.Ed. 2d 574 (1974).

Cited in Prager v. Smith, App.D.C., 195 A.2d 257 (1963); Norton v. Norton, App.D.C., 298 A.2d 514 (1972).

§ 30-315. Orders of Court on Finding Duty of Support.

If the court finds a duty of support as denied by this chapter it may order the defendant to pay such amounts under such terms and conditions as the court may deem proper. The court may require the defendant to furnish recognizance in the form of a cash deposit or bond, and may punish a defendant who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding cognizable by the court.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 15; 1973 Ed., § 30-315.)

Cases

Preference to legitimate children.

Children who are the result of a marital relationship are entitled to support from their father before and in preference to those born illegitimately. Jefferson v. Jefferson,

App.D.C., 192 A.2d 813 (1963); Mitchell v. Mitchell, App.D.C., 257 A.2d 496 (1969), aff'd, 445 F.2d 722 (D.C.Cir. 1971).

No abuse of discretion in award for support.

Cited in Brickey v. Wenstein, App.D.C., 173 A.2d 372 (1961); Scott v. Scott, 382 F.2d 461 (D.C.Cir. 1967); Watsor v. Dreadin, 309 A.2d 493 (1973), cert. den., 415 U.S. 959, 94 S.Ct. 1488, 39 L. Ed. 2d 574(1974).

An award pursuant to this chapter, obligating the husband, wife, father, mother or adult child of a recipient of public assistance to be responsible, according to his ability to pay, to support of the recipient, and pay $30 every 2 weeks toward maintenance and support of his mother was not abuse of discretion. Groover v. Essex County Welfare Bd., App.D.C., 264 A.2d 143 (1970).

An award of $60 every 2 weeks for maintenance and support of wife and children, under this chapter, was no abuse of discretion, although it would disable husband from meeting obligations to his common-law children with whom he lived. Miner v. Miner, App.D.C., 192 A.2d 811 (1963).

Under this chapter, evidence did not establish that the trial court abused its discretion in awarding a sum for support of the defendant's minor child in excess of the amount requested by his former wife and recommended by the forwarding State. Menetrez v. Menetrez, App.D.C., 147 A 2d 772 (1959).

Responding State must find duty of support.

The responding State in a Uniform Reciprocal Enforcement of Support Act proceeding must, de novo, find a duty of support and only then, determine the extent of liability. Harris v. Kinard, App.D.C., 443 A.2d 25 (1982).

Amount court in responding jurisdiction may order respondent to pay.

Amount of alimony set by D.C. court when acting as responding court can be less than the amount set by initiating court. Patterson v. Patterson, 112 WLR 2329 (Super.Ct.).

The court in a responding jurisdiction may order the respondent to pay the amount certified by the initiating jurisdiction or it may select an amount that is either lower or higher than the certified need. Fox v. Fox, 110 Wash. D.L. Rptr. 1097 (D.C.Super.Ct., Mar. 30, 1982).

Payments made as of date petition filed.

Where respondent failed to prove that he did not have a duty to pay alimony as of the date the Uniform Reciprocal Enforcement of Support Act (URESA) petition was filed in the initiating State, the alimony payments are to be made as of that date. Patterson v. Patterson, 112 WLR 2329(Super.Ct.).

Payment of opposing party's attorney's fees.

Factors to be considered in deciding whether a party in a Uniform Reciprocal Enforcement of Support Act (URESA) action should be ordered to pay all or any part of the opposing party's attorney's fees are the same factors applicable in divorce actions, including: (1) The ability of the party to pay, (2) the quality and nature of the services

provided, (3) the necessity for such services, and (4) the results obtained from the services. Patterson v. Patterson, 112 WLR 2329 (Super.Ct.).

Cited in Rittenhouse v. Rittenhouse, 461 A.2d 465 (D.C.App., 1983).

§ 30-316. Copies of Orders To Be Transmitted to Initiating State.

The court shall cause to be transmitted to the court of the initiating State a certified copy of all orders of support or for reimbursement therefor entered by it.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 16; 1973 Ed., § 30-316.)

§ 30-317. Duties of Court as to Receipt and Disbursement of Payments.

The court shall have the additional duty, which may be carried out by the clerk of the court, to receive payments made pursuant to order of the court by defendants within the District of Columbia or transmitted by the court of a responding State, and to disburse the same in accordance with the order of the court, and upon request of the court of an initiating State shall furnish to that court a certified statement of all payments received and disbursed in a particular case.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 17; 1973 Ed., § 30-317.)

§ 30-318. Husband and Wife as Witnesses.

In all proceedings arising under this chapter, husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 18; 1973 Ed., § 30-318.)

§ 30-319. Crediting of Payments Under Support Orders.

No order for support entered by the court in any proceeding arising under this chapter shall supersede any previous order of support entered in a divorce or separate maintenance action, or any other proceedings, but the amounts for a particular period paid pursuant to either order, when verified, shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 19; 1973 Ed., § 30-319.)

Cases

Cited in Fox v. Fox, 110 WLR 1097 (Super.Ct.). Cited in Howze v. Howze, App.D.C., 225 A.2d 477, app. dismissed, 385 F.2d 986 (D.C.Cir., 1967.)

§ 30-320. Duty To Support Illegitimate Child.

The natural father and the natural mother of an illegitimate child shall have the duty to support such child while such child is a minor. The alleged father's or alleged mother's parenthood of the illegitimate child may be established either by judicial process or by acknowledgment by the person whose parenthood is thus determined.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 20; 1973 Ed., § 30-320; Oct. 1, 1976 D.C. Law 1-87, § 34, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, Title 1, § 114, 23 DCR 8737.)

Cases

Duty to support distinct from right to visitation.

Cited in Harris v. Kinard, 443 A.2d 25 (D.C.App., 1982); District of Columbia ex rel. W.J.D. v. E.M., 467 A.2d 457, (D.C.App., 1983); Gilliam v. Branton, 470 A.2d 743 (D.C.App., 1983).

The duty to support, which is the underlying purpose for parentage proceedings and which arises automatically upon establishment of parentage by sufficient proof, is distinct from the right to visitation. Felder v. Allsopp, 391 A.2d 243 (1978).

§ 30-321. Effect of Participation in Proceedings.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (July 10, 1957, 71 Stat. 288, P.L. 85-94, § 21; 1973 Ed., § 30-321.)

§ 30-322. Right of Appeal.

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the superior court of the District of Columbia in civil cases.

HISTORY: (July 10, 1957, 71 Stat. 289, P.L. 85-94, § 22; July 8, 1963, 77 Stat. 77, P.L. 88-60, § 1; July 29, 1970, 84 Stat. 578, P.L. 91-358, title 1, § 159(f)(2); 1973 Ed., § 30-322.)

§ 30-323. Severability.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

HISTORY: (July 10, 1957, 71 Stat. 289, P.L. 85-94, § 23; 1973 Ed., § 30-323.)

§ 30-324. Appropriations.

Appropriations for expenses necessary for carrying out the purposes of this chapter, including additional personal services for the court and for the Office of the Corporation Counsel, are hereby authorized.

HISTORY: (July 10, 1957, 71 Stat. 289, P.L. 85-94, § 24; 1973 Ed., § 30-324.)

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Part I: General Provisions

§ 88.011. Short Title.

This act may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)."

HISTORY: (Am.L. 1979, ch. 79-383, § 1, eff. Oct. 1, 1979.)

Cases

In general.

Awards of alimony which constitute part of a property settlement should not be enforced through the Uniform Reciprocal Enforcement of Support Act. State ex. rel. Quigley v. Quigley, 463 So.2d 224 (Fla., 1985).

Construction and application.

Purpose of Uniform Reciprocal Enforcement of Support Act is to enable dependent in one State to initiate proceedings in State of her domicile for purpose of securing money for support from person residing in another State who is legally liable for support of such dependent. Hodge v. Maith, App. 5 Dist., 435 So.2d 387 (1983).

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in which outstanding child support payments may be collected. Op.Atty.Gen. 077-77, July 26, 1977.

The Uniform Reciprocal Enforcement of Support Act is not limited exclusively to the recovery of child support, but encompasses within its scope other lawfully imposed duties of support, including alimony with certain qualifications. Id.

The pursuit of a college education by child does not of itself negative a need for the parent's support or classify the child as utterly independent. Finn v. Finn, 312 So.2d 726 (1975).

Complaint filed under Uniform Enforcement of Support Act by wife against husband should not have been dismissed on ground that husband had pending in the same court an action for dissolution of marriage and that best interest of both parties would be served by having all matters determined in one suit, in that the Uniform Act was designed to provide a remedy entirely separate from and independent of any remedies existing under any other applicable provisions of law. Wagner v. Wagner, App., 291 So.2d 655 (1974).

Judgment and decree involving child support or maintenance falls into category of interlocutory adjudications, enforcement of which is not required under principles of full faith and credit; however, unless under law of State where decree is rendered it may be modified as to past due or accrued installments, the decree is entitled to full faith and credit as to such installments. Courtney v. Warner, App., 290 So.2d 101 (1974).

Judgment rendered against divorced father for past due child support payments was voidable where there was failure to comply with Soldiers' and Sailors' Civil Relief Act of 1940, but judgment was nonetheless valid and binding unless and until vacated, and was entitled to recognition under principles of full faith and credit. Id.

Where demanding papers accompanying Florida Governor's warrant of rendition showed pendency of criminal charge against father in Tennessee for violation of Tennessee child support order, and it appeared that such was a felony under Tennessee law, legal requirements imposed for extradition under Uniform Reciprocal Enforcement of Support Law were met. Cox v. State, App., 180 So.2d 467 (1955).

Uniform Reciprocal Enforcement of Support Law is designed for purpose of enforcing legal obligation of husband and father to support his wife and children, even though dependents may be in another State. Id.

Duty to support.

Uniform Reciprocal Enforcement of Support Act creates no duty of support, but simply provides means for enforcing duty of support as that duty may exist under law of responding State; this duty of support may then be enforced in any responding State where jurisdiction over father can be obtained. Hodge v. Maith, App. 5 Dist., 435 So.2d 387 (1983).

Only matter that can be addressed in a proceeding under Uniform Reciprocal Enforcement of Support Act is that of support. State ex. rel. Rock v. Rock, App. 2 Dist., 429 So.2d 1351 (1983).

Support under Uniform Reciprocal Enforcement of Support Act could not be conditioned on mother permitting her child, who resided with her in another State, to visit his father in Florida. Grosse v. Grosse, App., 347 So.2d 1099 (1977).

Parent has obligation to nurture, support, educate, and protect his minor children and the child has the right to call on him for the discharge of this duty. Finn v. Finn, 312 So.2d 726 (1975).

Stepfather, who has not adopted stepchild, is under a legal obligation to support stepchild. Fussell v. Douberly, App., 206 So.2d 231 (1968).

Stepfather was not obligated to support stepchildren whose natural father was still alive, even though stepfather had supported nonadopted stepchildren from time of his marriage to stepchildren's mother until her death. Id.

Father has primary duty to support child, but when all other things are equal basic duty to support child is coextensive between parents. Bullard v. Bullard, App., 195 So.2d 876 (1967).

Language of further agreement between former husband and former wife, who had remarried, supported conclusion terminating an allowance of $150 a month for housing for former wife and minor child, where property and financial section of final decree were based upon agreement between parties. Ash v. Ash, App., 198 So.2d 677 (1967).

Burden of showing sufficient change in circumstances to warrant adjustment in amount of child support awarded by divorce court was upon mother seeking increase. Simmons v. Simmons, App., 192 So.2d 325 (1966).

Evidence concerning wealth of father's present wife did not indicate that it had enhanced his income to an appreciable extent, and evidence as to needs of the one child still relying upon father for support and as to ability of father to contribute did not justify increasing to $35 per week the payment of $25 per week which divorce court had ordered father to make for support of two children. Id.

Change of circumstances warranting adjustment in amount awarded by divorce court as child support could be either increase in ability of father to contribute or additional needs of child. Id.

§ 39.11 gives juvenile court authority to permanently commit child only to licensed child placing agency, and it cannot otherwise permanently sever parental rights. State ex rel. Jannoni v. Yergey, App., 188 So.2d 833 (1966).

Rights under decree.

Where although order granting father's petition for a modification of child custody provisions bore case number of dissolution action and was presumably made a part of the case file in the dissolution action, both order modifying the custody provision and order hinging duty of support on father's being allowed to visit children were required to be vacated since, for all intention and purposes, such proceeding was improperly combined with mother's proceeding under Uniform Reciprocal Enforcement of Support Act. Leland v. Fricke, App., 376 So.2d 432 (1979).

In a proceeding under Uniform Reciprocal Enforcement of Support Act, the only matter susceptible to adjudication is the duty of support; hence, trial court erred in determining husband's visitation rights and in hinging the duty of support on the father being allowed to visit the children. Id.

Mother of minor children for whom there is provided in divorce decree periodic payments to be made by father for children's support ordinarily acquires vested right in past due installments. Warrick v. Hender, App. 198 So.2d 348 (1967).

Refusal or failure of wife to comply with provisions of support decree may be urged against her in opposition to contempt citation for his failure to make required payments. Id.

Where rights have vested or been acquired in good faith under final decree, courts generally refuse to stay or withhold execution of decree. Id.

Where father is granted visitation rights with correlative obligations to make support payments for his children, he ordinarily should not be required to make such payments so long as mother, having primary custody of children, fails or refuses to accord him visitation privileges so granted. Id.

Compliance with decree.

In a proceeding brought under Uniform Reciprocal Enforcement of Support Act the trial court was without jurisdiction to condition its enforcement of child support order on visitation rights being extended to the father. Davis v. Davis. App., 376 So.2d 430 (1979).

Where second husband insisted, with his wife's acquiescence, that he completely and exclusively perform role of father for stepchildren, and where visitation and contact of first husband with his children were virtually nonexistent, though under divorce decree he

had been granted right of reasonable visitation, refusing to find first husband in contempt for failure to make accrued child support payments was proper. Warrick v. Hender, App., 198 So.2d 348 (1967).

Where divorced father has not paid child support which divorce decree specified, judge should consider facts and significant changed circumstances which have arisen since decree, and make disposition in accordance with equitable principles. Id.

Modification of decree by agreement.

Although agreement, either express or implied, which purports to relieve father of his duty to support minor child entirely and permanently offends against public policy and is void, mother and father may as between themselves validly agree, expressly or impliedly, that one rather than the other shall provide or procure proper support if best interests of child are served thereby. Warrick v. Hender, App., 198 So.2d 348 (1967).

Power of parties to modify by agreement or for one party to waive or otherwise be deprived of provisions of child support in divorce decree is subject to supervision and scrutiny of court and will be given sanction and recognition only if best interests of child or children are fully served. Id.

Visitation rights.

Trial court in proceeding under Uniform Reciprocal Enforcement of Support Act erred in tying release of support money to determination of reasonable visitation rights. State ex rel. Rock v. Rock, App. 2 Dist., 429 So.2d 1351 (1983).

Jurisdiction.

There is not justification for permitting the purpose of child custody and support jurisdiction under statutes governing dissolution of marriage proceedings or purpose of Uniform Reciprocal Enforcement of Support Act jurisdiction to be thwarted on technical procedural grounds. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

Husband who offered evidence on merits submitted himself to jurisdiction of the court notwithstanding there was no personal service of rule to show cause which precluded order finding husband in indirect contempt for nonpayment of child support. Sikes v. Sikes, App., 242 So.2d 494 (1970).

Neither the Attorney General nor the Department of Health and Rehabilitative Services is authorized to enter into any binding agreement or arrangement with a foreign nation or a "foreign jurisdiction" granting reciprocity in the establishment and enforcement of duties of support or which is substantially similar to the Uniform Reciprocal Enforcement of Support Act. The Attorney General is without lawful authority to bestow jurisdiction of proceedings under the Act on the courts or any governmental agency of the State of Florida or any other State or nation, or the courts of governmental agencies thereof. Id.

Counterclaim for divorce.

Intent of Uniform Reciprocal Enforcement of Support Law was to confer jurisdiction on circuit court solely for purpose of enforcing reciprocal support order; thus, husband's counterclaim for divorce, in action by wife under this section to require husband to pay arrearages due under out-of-State support order, should have been dismissed. Simpson v. Simpson, App., 247 So.2d 792 (1971).

Extradition.

Where petitioner when applying for habeas corpus writ appended no affidavit whatever to his petition and did not even sign it himself but merely contended in the abstract therein that Florida Governor's warrant of rendition and charges contained therein were insufficient to justify extradition and upon hearing no evidence whatever was adduced or tendered to in any way refute any of the recitals or charges contained in rendition warrant or other papers, unit was properly refused. Cox v. State, App., 180 So.2d 467 (1965).

Hearing to determine rights.

Where no order was ever entered restraining wife from removing children from jurisdiction of court, but in action for divorce instituted by the wife an order was entered requiring wife to return children to the State and wife refused to do so and subsequently instituted proceedings under Uniform Reciprocal Enforcement of Support Law for support of two minor children, denial of relief to wife should not have been extended to the children who might be in real need of financial assistance from their father and hence order denying petition for relief would be reversed and cause remanded with direction to conduct hearing to determine rights of the parties. Hill v. Hill, App., 204 So.2d 346 (1967).

Issues, proof, and variance.

Defendant wife in divorce action would be granted discovery concerning husband's assets and income, although husband admitted his ability to respond to reasonable support and other allowances, where husband's disclosure was not more specific; wife would not, however, be granted discovery of tax returns for years prior to marriage. Ortiz v. Ortiz, App., 194 So.2d 38 (1967).

Review.

Refusal of child support for son whose disabilities of nonage had been removed and for second son who had trust, resulting from injuries received, producing income ample for his support was not error. Carmody v. Carmody, App., 230 So.2d 40 (1970).

The test applicable on appeal by former wife from order granting increase in amount of child support on theory that chancellor abused discretion by failing to grant larger increase was not whether reviewing court might feel that larger allowance was or was not justified but whether chancellor's exercise of discretion had been shown to be clearly erroneous. Morse v. Morse, App., 191 So.2d 449 (1966).

Chancellor did not erroneously exercise his discretion in ordering smaller increase in child support than amount desired by former wife. Id.

Fact that Florida law did not require father to support a child who had turned 18 and New York statute required him to continue support payments until child turned 21 did not preclude a finding of substantial similarity or reciprocity of statutes and thus proceedings for support of parties' 18-year-old son, commenced under Florida's Uniform Reciprocal Enforcement of Support Act, was properly transferred to family court in New York without jurisdictional defect. Davis v. Stillerman (1978), 411 N.Y.S.2d 353, 66 A.D.2d 818.

Substantive law of New York governed support proceedings commenced under Florida's Uniform Reciprocal Enforcement of Support Act and transferred to family court in New York pursuant to the Uniform Support of Dependents Law. Id.

Parties entitled to support.

Twenty-year-old son whose disabilities of nonage has been removed was not entitled to parental support. Carmody v. Carmody, App., 280 So.2d 40 (1970).

Refusal of child support for son whose disabilities of nonage had been removed and for second son who had trust, resulting from injuries received, producing income ample for his support, was not error. Id.

Foreign judgments.

Mere fact that father moved to Florida which required support only to age 18 would not defeat his obligation required under law of foreign jurisdiction that support continue until each of father's children reached the age of 21 which was being enforced in Florida. Gonzalez-Goenage v. Gonzalez, App., 426 So.2d 1106 (1983).

In proceeding wherein circuit court modified Oregon judgment, which dissolved marriage, after the enrollment of such judgment, circuit court was not bound by a Florida court's modification of the judgment in a proceeding under Uniform Reciprocal Enforcement of Support Act, in light of fact that such court had been without subject-matter jurisdiction to modify former husband's child support obligations existing under the Oregon judgment. Coons v. Wilder, App., 416 N.E.2d 785 (1981).

In dissolution action, in which there was not showing that Pennsylvania law permitted retroactive modification of previous Pennsylvania decision granting wife divorce from bed and board and ordering husband to pay $550 per month support, trial court erred in cancelling accumulated arrearages which had been previously held not to have been waived. Fugassi v. Fugassi, App., 332 So.2d 695 (1976).

Foreign decree for payment of alimony or child support in installments is entitled to enforcement within State under full faith and credit clause if it is final; however, a distinction must be drawn between past due installments and installments not yet accrued; equitable defenses are assertable as to future installments when foreign divorce decree is reduced to local decree. Id.

§ 88.012. Legislative Intent.

Common-law and statutory procedures governing the remedies for the establishment and enforcement of orders of support for children by responsible parents under the Uniform Reciprocal Enforcement of Support Act have not proven sufficiently effective or efficient to cope with the increasing incidence of establishing and collecting child support obligations when the petitioner and respondent reside in different States. The State, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by the additional remedies directed to the resources of the responsible parents as mandated by the Florida IV-D program in ch. 409. In order to render resources more immediately available to satisfy child support orders, it is the legislative intent that the remedies provided herein shall be in addition to, and not in lieu of, existing remedies. It is declared to be the public policy of this State that this act shall be construed and administered to the end that children residing in this or some other State shall be

maintained from the resources of responsible parents, whether the responsible parents live in this or some other State, thereby relieving, at least in part, the burden borne by the custodial parent of the general citizenry through public assistance programs.

HISTORY: (L. 1979, ch. 79-383, § 2, eff. Oct. 1, 1979.)

Cases

In general.

Foreign alimony award, certified by issuing State as a "support" order and not a "property" settlement," was enforceable through the Uniform Reciprocal Enforcement of Support Act, notwithstanding fact that this section of amended act referred only to "child support" and not "alimony." State ex rel. Quigley v. Quigley, 463 So.2d 224 (Fla., 1985).

Remedies provided by this chapter are in addition to and entirely separate from and independent of any remedies existing under applicable provisions of laws. Kirby v. Kirby, App. 405 So.2d 207 (1981).

§ 88.021. Purpose.

The purpose of this Act is to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (Am.L. 1979, ch. 79-383, § 3, eff. Oct. 1, 1979.)

Cases

In general.

Trial court, in proceeding for child support brought under the Uniform Reciprocal Enforcement of Support Law, erred in enlarging its jurisdiction to adjudicate and enforce child visitation rights; the only matter susceptible of adjudication under the support law was that of duty of support. Vecellio v. Vecellio, App., 313 So.2d 61 (1975).

A foreign judgment entered pursuant to filiation proceedings is entitled to full faith and credit where the respondent specially appeared unsuccessfully to challenge the jurisdiction and no appeal therefrom was prosecuted. Op.Atty.Gen. 071-392, Dec. 16, 1971.

§ 88.031. Definitions.

As used in this chapter, unless the context requires otherwise;

(1) "COURT" means the circuit court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DEPARTMENT" means the Department of Health and Rehabilitative Services.

(3) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for dissolution or marriage, separation, separate

maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

(4) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this act.

(5) "INITIATING COURT" means the court in which a proceeding is commenced.

(6) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(7) "IV-D PROGRAM" means the Child Support Enforcement Program operated pursuant to Title IV-D of the Social Security Act, 42 U.S.C. § 1302, 88 Stat. 2351, P.L. 93-647, and ch. 409.

(8) "LAW" includes both common and statutory law.

(9) "PETITIONER" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, who has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(10) "PROGRAM ATTORNEY" means an attorney employed by, or under contract with, the department to provide legal representation for the department in a proceeding related to determination of paternity or child support enforcement brought pursuant to law.

(11) "PROSECUTING ATTORNEY" means the State attorney or program attorney in the appropriate place who has the duty to enforce laws relating to the failure to provide for the support of any person.

(12) "REGISTER" means to record or file in the Registry of Foreign Support Orders.

(13) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(14) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(15) "RESPONDENT" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(16) "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(17) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.

(18) "STATES" includes a State, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, in which this or substantially similar law is in effect, and includes any foreign nation or State of a foreign nation declared pursuant to § 88.0405 to have similar reciprocal provisions.

(19) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of a petitioner, whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (Am.L. 1973, ch. 73-300, § 1, eff. Aug. 5, 1973; L. 1979, ch. 79-383, § 4, eff. Oct. 1, 1979; L. 1981, ch. 81-86, § 1, eff. July 1, 1981.)

Cases

Construction and application.

Neither the Attorney General nor the department of health and rehabilitative services is empowered to make a declaration or order of reciprocity or to make a determination that a foreign nation or a "foreign jurisdiction" has a reciprocal enforcement of support law in effect in that jurisdiction which is substantially similar to the Uniform Reciprocal Enforcement of Support Act. The Attorney General is without lawful authority to bestow jurisdiction of proceedings under the Act on the courts or any governmental agency of the State of Florida or any other State or nation, or the courts of governmental agencies thereof. Op.Atty.Gen. 080-58, June 18, 1980.

Neither the Attorney General nor the department of health and rehabilitative services is authorized to enter into any binding agreement or arrangement with a foreign nation or a "foreign jurisdiction" granting reciprocity in the establishment and enforcement of duties of support or which is substantially similar to the Uniform Reciprocal Enforcement of Support Act. The Attorney General is without lawful authority to bestow jurisdiction of proceedings under the Act on the courts or orders of support in or entered in that foreign nation or the State of Florida. Id.

Uniform Reciprocal Enforcement of Support Act creates no duty of support; such act simply provides a means for enforcing a duty of support as that duty may exist under law of responding State and provides remedies in addition to and entirely separate from and independent of any remedies existing under other applicable provisions of law. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

Complaint filed under Uniform Enforcement of Support Act by wife against husband should not have been dismissed on ground that husband had pending in the same court an action for dissolution of marriage and that best interest of both parties would be served by having all matters determined in one suit, in that the Uniform Act was designed to provide a remedy entirely separate from and independent of any remedies existing under any other applicable provisions of law. Wagner v. Wagner, App., 291 So.2d 655 (1974).

Petitioner.

Grandmother, with whom adult dependent resided with his divorced parents' knowledge and consent, has standing to petition for support under Uniform Reciprocal Enforcement of Support Act. Sudduth v. Scott, App., 394 So.2d 536 (1981).

Duty to support.

While Uniform Reciprocal Enforcement of Support Act does not create duty of support, it is not necessary that action under Act be based on preexisting judicial determination of support duty, as, under Act, "duty of support" is defined as duty "imposed or imposable" by law. Hodge v. Maith, App. 5 Dist., 435 So.2d 387 (1983).

§ 88.0405. Declaration of Reciprocity; Other Nations.

(1) If the Attorney General finds that the reciprocal provisions are available in a foreign nation or a State of a foreign nation for the enforcement of support orders issued in this State, the Attorney General may declare the foreign nation or State of a foreign nation to be a reciprocating State for the purpose of this chapter.

(2) A declaration made pursuant to this section may be revoked by the Attorney General.

HISTORY: (L. 1981, ch. 81-86, § 2, eff. July 1, 1981.)

§ 88.041. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1955, ch. 29901, § 4.)

Cases

Construction and application.

Trial court acted within its continuing power to modify final judgment of dissolution in dismissing child support arrearages as a result of wife's willful refusal to comply with visitation orders, despite fact that support orders were obtained in North Carolina and registered with trial court under the Uniform Reciprocal Enforcement of Support Act, where wife's enforcement action under the Act and dissolution action were consolidated to avoid any variance in orders entered and trial judge simply exercised his full range of authority in determining relative rights and obligations of the parties. Kirby v. Kirby, App., 405 So.2d 207 (1981).

Remedies provided by this chapter are in addition to and entirely separate from and independent of any remedies existing under applicable provisions of law. Id.

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in whic: outstanding child support payments may be collected. Op.Atty.Gen. 077-77, July 26, 1977.

The Uniform Reciprocal Enforcement of Support Act is not limited exclusively to the recovery of child support, but encompasses within its scope other lawfully imposed duties of support, including alimony, with certain qualifications. Id.

A timely motion to reinstate, rather than the initiation of a new Uniform Reciprocal Enforcement of Support Act petition, is the preferable procedure in a case where the court clerk has erroneously dismissed a pending URESA petition for lack of prosecution. Id.

Jurisdiction.

When a Uniform Reciprocal Enforcement of Support Act proceeding for enforcement of a child support obligation is lodged in same court of responding State in which antecedent divorce proceedings took place, the Uniform Reciprocal Enforcement of

Support Act proceeding is maintainable as a separate remedial action and may not be dismissed simply because the same court retains jurisdiction of the subject of child support as part of divorce proceeding. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

When a postdecretal child custody and support proceeding in conjunction with dissolution of marriage and a Uniform Reciprocal Enforcement of Support Act proceeding are pending in same court, jurisdiction should not be exercised in one case with total disregard for the pendency of the other; orders in the separate proceedings should be compatible, with due regard to entire range of inquiry available to court in its determination of relative rights and obligations of parties; in such a situation, the proceedings should be consolidated to avoid any variance in such orders. Id.

There is no justification for permitting the purpose of child custody and support jurisdiction under statutes governing dissolution of marriage proceedings or purpose of Uniform Reciprocal Enforcement of Support Act jurisdiction to be thwarted on technical procedural grounds. Id.

Evidence.

Burden of showing sufficient change in circumstances to warrant adjustment in amount of child support awarded by divorce court was upon mother seeking increase. Simmons v. Simmons, App., 192 So.2d 325 (1966).

Evidence concerning wealth of father's present wife did not indicate that it had enhanced his income to an appreciable extent, and evidence as to needs of the one child still relying upon father for support and as to ability of father to contribute did not justify increasing to $35 per week the payment of $25 per week which divorce court had ordered father to make for support of two children. Id.

Change of circumstances warranting adjustment in amount awarded by divorce court as child support could be either increase in ability of father to contribute or additional needs of child. Id.

§ 88.051. Extent of Duties of Support.

Duties of support arising under the law of this State when applicable under § 88.081, bind the respondent present in this State regardless of the presence or residence of the petitioner.

HISTORY: (Am.L. 1979, ch. 79-383, § 5, eff. Oct. 1, 1979.)

Part II: Criminal Enforcement

§ 88.061. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged in that State with failing to provide for the support of any person. Provisions for extraditions of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the Act and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the act was in the demanding State.

HISTORY: (Am.L. 1979, ch. 79-383, § 6, eff. Oct. 1, 1979.)

Cases

Failure to provide for support.

Person who has abandoned his children in Florida can be prosecuted under § 856.04 making it a felony to abandon and fail to support children, even though he no longer resides in Florida, and he is subject to extradition, under § 910.01 governing jurisdiction and venue for offenses committed elsewhere but consummated within Florida, or to interstate rendition under Uniform Enforcement of Support Act (this section). State v. Darnell, 230 So.2d 151 (1969) mandate conformed to 231 So.2d 870.

Form and contents of demand.

Where papers annexed to rendition warrant indicated that crime charged was other than the crime recited in extradition warrant, warrant was not supported by annexed papers and was deficient for failure to place accused on notice of crime with which he has charged. State ex. rel. Burnstine v. Purdy, App., 219 So.2d 95 (1969).

§ 88.065. Conditions of Interstate Rendition.

(1) Before making demand upon the Governor of another State for the surrender of a person charged in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the petitioner initiated proceedings for support under this act or that any proceeding would be of no avail.

(2) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the petitioner prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1979, ch. 79-383, § 7, eff. Oct. 1, 1979.)

§ 88.071. Repealed by L. 1979, ch. 79-383, § 39, eff. Oct. 1, 1979.

Part III: Civil Enforcement

§ 88.081. Choice of Law.

Duties of support applicable under this act are those imposed under the laws of any State where the respondent was present for the period during which support is sought. The respondent is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Am.L. 1979, ch. 79-383, § 8, eff. Oct. 1, 1979.)

Cases

Construction and application.

Uniform Reciprocal Enforcement of Support Act creates no duty of support; such act simply provides a means for enforcing a duty of support as that duty may exist under law of responding State and provides remedies in addition to and entirely separate from and independent of any remedies existing under other applicable provisions of law. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

Divorce court which had issued final decree fixing child support at $40 per week "so long as visitation rights . . . are complied with" had authority to enter order suspending support payments while mother was in contempt for failing to comply with visitation provision of such decree notwithstanding mother, who had become Pennsylvania resident subsequent to decree, had initiated action in Pennsylvania through Uniform Reciprocal Enforcement of Support Act. Cochran v. Cochran, App., 263 So.2d 292 (1972).

Law governing.

Substantive law of New York governed support proceedings commenced under Florida's Uniform Reciprocal Enforcement of Support Act and transferred to Family court in New York pursuant to the Uniform Support of Dependents Law. Danis v. Stillerman 411 N.Y.S.2d 353, 66 A.D.2d 818 (1978).

Where Florida divorce court had expressly reserved jurisdiction per its decree fixing child support at $40 per week "so long as visitation rights . . . are complied with" to insure that its judgment would be complied with, mother, although she subsequently became a Pennsylvania resident, was subject to the continuing jurisdiction of the Florida court. Cochran v. Cochran, App., 263 So.2d 292 (1972).

Where divorce was granted in Florida, parties were resident in Florida at time of divorce, father remained Florida resident and father and mother were both subject to continuing jurisdiction of divorce court which had fixed child support at $40 per week "so long as visitation rights . . . are complied with," Florida law governed determination of duty of support notwithstanding mother, subsequent to divorce, had become Pennsylvania resident and resided with couple's children in Pennsylvania. Id.

Jurisdiction.

Husband who offered evidence on merits submitted himself to jurisdiction of the court notwithstanding there was no personal service of rule to show cause which preceded order finding husband in indirect contempt for nonpayment of child support. Sikes v. Sikes, App., 242 So.2d 494 (1970).

§ 88.091. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual petitioner, it has the same right to initiate a proceeding under this act as the individual petitioner for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (Am.L. 1979, ch. 79-383, § 9, eff. Oct. 1, 1979.)

§ 88.101. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages are enforceable by a proceeding under this act, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the respondent.

HISTORY: (Am.L. 1979, ch. 70-383, § 10, eff. Oct. 1, 1979.)

Cases

Hearing to determine rights.

Mother could seek relief from order suspending child support payments in dissolution of marriage proceeding through modification or collateral attack, if grounds for relief existed in her favor; representation of her interest by State attorney in such respect was compatible with State attorney's duty under the Uniform Reciprocal Enforcement of Support Act. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

Where no order was ever entered restraining wife from removing children from jurisdiction of court, but in action for divorce instituted by the wife an order was entered requiring wife to return children to the State and wife refused to do so and subsequently instituted proceedings under Uniform Reciprocal Enforcement of Support Law for support of two minor children, denial of relief to wife should not have been extended to the children who might be in real need of financial assistance from their father, and hence order denying petition for relief would be reversed and cause remanded with directions to conduct hearing to determine rights of the parties. Hill v. Hill, App., 204 So.2d 346 (1967).

§ 88.105. Jurisdiction.

Jurisdiction of any proceeding under this Act is vested in the circuit court.

HISTORY: (L. 1979, ch. 79-383, § 11, eff. Oct. 1, 1979.)

§ 88.111. Contents and Filing of Motion for Support; Venue.

(1) The motion shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and the persons for whom support is sought and all other pertinent information. The petitioner may include in or attach to the motion any information which may help in locating or identifying the respondent, including a photograph of the respondent, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(2) The motion may be filed in the appropriate court of any State in which the petitioner resides. The court shall not decline or refuse to accept and forward the motion on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (Am.L. 1979, ch. 79-383, § 12, eff. Oct. 1, 1979.)

Cases

In general.

Where wife had proceeded under Uniform Reciprocal Enforcement of Support Act to enforce child support provisions of Texas divorce decree, the wife could subsequently pursue an action under the Act to enforce the payment of arrearages that had accrued as result of the order. Gioia v. Gioia, App. 4 Dist., 435 So.2d 367 (1983).

In suit, in which divorced wife sought to establish her Georgia money judgment against divorced husband as a Florida judgment and to obtain such other relief as court deemed proper, in which she sought damages for breach of agreement and specific performance of such agreement and in which she sought to recover support for parties' daughter under Uniform Reciprocal Enforcement of Support Act, complaint and amendments thereto sufficiently advised divorced husband of nature of the suit and invoked equitable jurisdiction of trial court. Grotnes v. Grotnes, App., 338 So.2d 1122 (1976).

Decisions in other States.

Evidence that mother had incurred over $300 in telephone calls to maternal grandmother who had custody of child, that mother had offered to send airplane ticket to grandmother to be used to transport child from Florida to Washington, D.C., where mother resided and that mother was employable, at least to extent of earning money by caring for children of working mothers, sustained finding that mother was financially able to provide $10 per week for support of child. Watson v. Dreadin, D.C.App., 309 A.2d 493 (1973) cert. den. 94 S.Ct. 1488, 415 U.S. 959, 39 L.Ed. 2d 574.

Application of Uniform Reciprocal Enforcement of Support Act did not deny mother from whom support was sought due process even if mother had not been given notice of initiating proceeding where mother was provided with notice of proceeding in responding court and was given opportunity to be heard at hearing which she attended with appointed counsel in responding court. Id.

In Uniform Reciprocal Enforcement of Support Act case, question of whether maternal grandmother, who initiated petition in Florida, had valid custody of child was not for determination by courts of District of Columbia where mother from whom support was sought resided, where maternal grandmother had obtained legal custody under preliminary order of Florida court and the mother produced no further order to the contrary. Id.

Law of initiating jurisdiction determines requisite status of petitioning party in Uniform Reciprocal Enforcement of Support Act case. Id.

In proceedings in responding court under Uniform Reciprocal Enforcement of Support Act, mother from whom support for child was sought, could not challenge standing of maternal grandmother, who had been granted custody of child under preliminary order of initiating court, to initiate the support proceedings. Id.

Complaint filed in Florida by maternal grandmother to obtain support from mother of child was sufficient to comply with Florida Uniform Reciprocal Enforcement Act. Id.

§ 88.121. Officials To Represent Petitioner.

If this State is acting as an initiating State, the prosecuting upon the request of the court or of the Department of Health and Rehabilitative Services shall represent the petitioner in any proceeding under this act.

HISTORY: (Am.L. 1969, ch. 69-106, §§ 19, 35, eff. July 1, 1969; L. 1969, ch. 69-263, § 1, eff. July 1, 1969; L. 1977, ch. 77-147, § 26, eff. Aug. 2, 1977; L. 1979, ch. 79-383, § 13, eff. Oct. 1, 1979.)

§ 88.131. Motion on Behalf of a Minor.

A motion on behalf of a minor petitioner may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (Am.L. 1979, ch. 79-383, § 14, eff. Oct. 1, 1979.)

Cases

In general.

A timely motion to reinstate, rather than the initiation of a new Uniform Reciprocal Enforcement of Support Act petition is the preferable procedure in a case where the court clerk has erroneously dismissed a pending URESA petition for lack of prosecution. Op.Atty.Gen. 077-77, July 26, 1977.

Decisions in other States.

In Uniform Reciprocal Enforcement of Support Act case, question of whether maternal grandmother, who initiated petition in Florida, had valid custody of child was not for determination by courts of District of Columbia where mother from whom support was sought resided, where maternal grandmother had obtained legal custody under preliminary order of Florida court and the mother produced no further order to the contrary. Watson v. Dreadin, D.C.App., 309 A.2d 493 (1973) cert. den. 94 S.Ct. 1488, 415 U.S. 959, 39 L.Ed. 2d 574.

Law of initiating jurisdiction determines requisite status of petitioning party, in a Uniform Reciprocal Enforcement of Support Act case. Id.

§ 88.141. Duty of Initiating Court.

If the initiating court finds that the motion sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the respondent or his property, it shall so certify and cause three copies of the motion and its certificate and one copy of this act to be sent to the responding court or the State Information Agency. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court are unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (Am.L. 1979, ch. 79-383, § 15, eff. Oct. 1, 1979.)

Cases

In general.

Where suit was filed in New York under Uniform Reciprocal Enforcement of Support Law to require father to pay child support for his two minor children living in New York, where, after petition and supporting documents were filed in New York court, that court sent those documents to Florida Department of Legal Affairs, which forwarded documents to child support enforcement section of the Department of Health and Rehabilitative Services, which filed documents with circuit court, procedure used for filing case in circuit court was authorized by statute, and fact that documents were not sent directly to circuit court did not deprive circuit court of jurisdiction. Matter of Bush, App., 371 So.2d 587 (1979).

The Uniform Reciprocal Enforcement of Support Act order ultimately rendered by the court of the responding State may properly encompass within its scope both unpaid, due and owing support arrearages as well as continued support payments, where applicable. Op.Atty.Gen. 077-77, July 26, 1977.

The Uniform Reciprocal Enforcement of Support Law, requires only that the initiating State furnish the responding State with copies of the complaint, the law, and the certification by the court of its findings as to the duty of support and jurisdiction. The copies of the complaint need not be certified. The certification by the court of its findings should comply with any requirements of the initiating State as to form and execution. Op.Atty.Gen. 074-385, Dec. 23, 1974.

§ 88.151. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the petitioner but may request the responding court to collect fees and costs from the respondent. A responding court shall not require payment of a filing fee or other costs from the petitioner, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing

of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the respondent, be paid in whole or in part by the respondent or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the petitioner.

HISTORY: (Am.L. 1979, ch. 79-383, § 16, eff. Oct. 1, 1979.)

Cases

Construction and application.

Trial court may allow a divorced wife a reasonable amount for attorney fees in an action to enforce a foreign divorce decree under which former husband is in arrears in child support. Grotnes v. Grotnes, App., 338 So.2d 1122 (1976).

Wife was entitled to an award of reasonable attorney fees and costs in regard to her action for present and past due child support and alimony under Georgia divorce decree. Id.

It was an abuse of discretion to deny wife attorney's fees for services of her counsel in defending her former husband's attempt to reduce award of child support in judgment of dissolution. Hicks v. Hicks, App., 313 So.2d 64 (1975).

The clerk's fees in proceedings under the Uniform Reciprocal Enforcement of Support Act, this chapter may be charged against the county in the court's discretion, except when the proceedings are initiated by another State or agency thereof. The clerk is not entitled to a fee when such proceedings are instituted by an individual plaintiff. Op.Atty.Gen. 075-297, Dec. 3, 1975.

Upon applicable statutes, court could allow divorced wife a reasonable amount for attorney's fees in action to enforce foreign divorce decree under which father was in arrears in child support. Courtney v. Warner, App., 290 So.2d 101 (1974).

Clerk's service charge "for receiving and disbursing domestic support payments" pursuant to § 28.24, applies to payments received and disbursed pursuant to uniform reciprocal support proceedings. Op.Atty.Gen. 070-148, Oct. 27, 1970.

§ 88.161. Jurisdiction by Arrest.

If the court of this State finds that the respondent may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the respondent by appropriate process; or

(2) As a responding court, obtain the body of the respondent by appropriate process. Thereupon, it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (Am.L. 1979, ch. 79-383, § 17, eff. Oct. 1, 1979.)

§ 88.171. State Information Agency.

(1) The Department of Health and Rehabilitative Services is hereby designated as the State Information Agency under this act, and it shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the Legislature, the agency shall distribute copies of any amendments to the act and a statement of the effective dates thereof to all other State Information Agencies.

(b) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act.

(c) Forward to the court in this State which has jurisdiction over the respondent or his property motions, certificates, and copies of the acts it receives from courts or information agencies of other States.

(2) If the State Information Agency does not know the location of the respondent or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources, such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, when such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (Am.L. 1965, ch. 65-208, § 1, eff. July 1, 1965; L. 1969, ch. 69-106, §§ 11, 35, eff. July 1, 1969; L. 1979, ch. 79-383, § 18, eff. Oct. 1, 1979.)

§ 88.181. Duty of the Court and Officials of this State as Responding State.

(1) After the responding court receives copies of the motion, certificate, and act from the initiating court or State Information Agency, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the respondent or his property and shall request the court to set a time and place for a hearing and give notice thereof to the respondent in accordance with law.

HISTORY: (Am.L. 1979, ch. 79-383, § 19, eff. Oct. 1, 1979.)

Cases

In general.

Although the Uniform Reciprocal Enforcement of Support Act is broad enough to permit responding court in action thereunder to initially determine duty of support, this is not permitted when there is previous order establishing support in underlying dissolution of marriage proceeding. Stephens v. Stephens, App., 402 So.2d 1301 (1981).

Where suit was filed in New York under Uniform Reciprocal Enforcement of Support Law to require father to pay child support for his two minor children living in New York, where, after petition and supporting documents were filed in new York court, that court sent those documents to Florida Department of Legal Affairs, which forwarded documents to child support enforcement section of the Department of Health and Rehabilitative Services, which filed documents with circuit court, procedure used for filing case in circuit court was authorized by statute, and fact that documents were not sent directly to circuit court did not deprive circuit court of jurisdiction. Matter of Bush, App., 871 So.2d 587 (1979).

The Uniform Reciprocal Enforcement of Support Law, requires only that initiating State furnish the responding State with copies of the complaint, the law, and the certification by the court of its findings as to the duty of support and jurisdiction. The copies of the complaint need not be certified. The certifications by the court of its findings should comply with any requirements of the initiating State as to form and execution. Op.Atty.Gen. 074-385, Dec. 23, 1974.

§ 88.191. Further Duties of Court and Officials in the Responding State.

(1) If, because of inaccuracies in the motion or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended motion from the initiating court.

(2) If the respondent or his property is not found in the circuit, and the prosecuting attorney discovers that the respondent or his property may be found in another circuit of this State or in another State, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other circuit or to a court in the other State or to the Information Agency or other proper official of the State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the respondent or his property, he shall so inform the initiating court.

HISTORY: (Am.L. 1979, ch. 79-383, § 20, eff. Oct. 1, 1979.)

§ 88.193. Hearing and Continuance.

If the petitioner is not present at the hearing and the respondent denies owing the duty of support alleged in the motion or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be advanced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1979; ch. 79-383, § 21, eff. Oct. 1, 1979.)

Cases

In general.

In action by Department of Health and Rehabilitation Services seeking to enforce child support obligation under Uniform Reciprocal Enforcement of Support Act, Department could not claim surprise when father offered evidence of change of circumstances such as to warrant diminution of child support obligation where father's lawyer had previously requested discovery of wife's current financial condition. Florida Dept. of Health and Rehabilitative Services on Behalf of Ciferni v. Ciferni, App. 429 So.2d 92 (1983).

Absent transcript of hearing under the Uniform Reciprocal of Enforcement of Support Act, it would be assumed by District Court of Appeal that trial court did not err in concluding that circumstances were sufficiently changed as to warrant reduction in father's support obligation. Id.

§ 88.201. (Repealed by L. 1979, ch. 79-383, § 39, eff. Oct. 1, 1979.)

§ 88.211. Order of Support.

If the responding court finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to the order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any circuit in which the respondent is present or has property have the same powers and duties to enforce the order as have those of the circuit in which it was first issued. If enforcement if impossible or cannot be completed in the circuit in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any circuit in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (Am.L. 1979, ch. 79-383, § 22, eff. Oct. 1, 1979.)

Cases

Visitation.

Trial court erred in granting father visitation rights and requiring reconsideration of support award upon mother's failure to permit visitation where mother's petition for modification of father's child support obligation was filed pursuant to Uniform Reciprocal Enforcement of Support Act, §§ 88.011 to 88.371. Jones v. Jones, App. 3 Dist., 471 So.2d 1363 (1985).

In general.

Trial court in proceedings under Uniform Reciprocal Enforcement of Support Act erred in requiring that payments be made directly to wife; payment to clerk of court is specifically required in this section and § 88.231. State ex rel. Rock v. Rock, App. 2 Dist., 429 So.2d 1351 (1983).

Order, which was entered in action brought under Uniform Reciprocal Enforcement of Support Act, was defective in adjudicating visitation rights for father and conditioning the ordered child support payments on allowance of such visitation rights by mother. Carroll v. Carroll, App., 415 So.2d 102 (1982).

Father's duty of child support enforceable in a Uniform Reciprocal Enforcement of Support Act actior was circumscribed by an order entered in dissolution of marriage proceeding suspending child support payments; thus, it was error to deny father's motion for suspension of child support payments entered in the Uniform Reciprocal Enforcement of Support Act proceeding based on prior entry of suspension order in dissolution of marriage proceeding. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in which outstanding child support payments may be collected. Op.Atty.Gen. 077-77, July 26, 1977.

The Uniform Reciprocal Enforcement of Support Act order ultimately rendered by the court of the responding State may properly encompass within its scope both unpaid, due and owing support arrearages as well as continued support payments, where applicable. Id.

Contempt.

Father's testimony, supported by physician's certificate, that his present physical condition rendered him incapable of following trade of plumber or any employment involving physical exertion, coupled with evidence of present total lack of funds and unemployment established present inability to make child support payments, and he should not have been sentenced to imprisonment for civil contempt. In interest of S.L.T., App., 180 So.2d 374 (1965).

It could be assumed that purpose of original order to support petitioner's minor children was carried out where contempt proceedings took place after entry of support order and proceedings were initiated by court clerk and not petitioner's wife. State ex. rel. Baxley v. Boyer, App., 180 So.2d 165 (1965).

Where purpose of original support order was to insure proper care and support of petitioner's minor children and order required petitioner to pay $30 per week into court registry, failure of petitioner to pay as ordered was at best only technical contempt. Id.

Where contempt proceedings were brought against petitioner by clerk of juvenile court because petitioner failed to pay $30 per week into court pursuant to support order and where it appeared that petitioner was supporting his minor children because he and his wife and minor children were living as a family, sentence of $500 fine or four months in jail for contempt was excessive. Id.

Hearing to determine rights.

Where no order was ever entered restraining wife from removing children from jurisdiction of court, but in action for divorce instituted by the wife an order was entered requiring wife to return children to the State and wife refused to do so and subsequently instituted proceedings under Uniform Reciprocal Enforcement of Support Law for support of two minor children, denial of relief to wife should not have been extended to the

children who might be in a real need of financial assistance from their father, and hence order denying petition for relief would be reversed and cause remanded with directions to conduct hearing to determine rights of the parties. Hi v. Hill, App., 204 So.2d 346 (1967).

§ 88.221. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of each support order to be sent to the initiating court and the State Information Agency.

HISTORY: (Am.L. 1979, ch. 79-383, § 23, eff. Oct. 1, 1979.)

§ 88.231. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the respondent to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the respondent to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due.

(2) Require the respondent to report personally and to make payments at specified intervals to the clerk of the court.

(3) Punish under the power of contempt the respondent who violates any order of the court.

HISTORY: (Am.L. 1979, ch. 79-383, § 24, eff. Oct. 1, 1979.)

Cases

Construction and application.

Trial court in proceedings under Uniform Reciprocal Enforcement of Support Act erred in requiring that payments be made directly to wife; payment to clerk of court is specifically required in § 88.211 and this section. State ex rel. Rock v. Rock, App. 2 Dist., 429 So.2d 1351 (1983).

§ 88.235. Paternity.

If the respondent asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1979, ch. 79-383, § 25, eff. Oct. 1, 1979.)

Cases

Construction and application.

While § 742.011 et seq. governing determination of paternity provides exclusive remedy for natural mother in establishing paternity and enforcing support rights on behalf of her child, where nonresident mother is involved and putative father resides in Florida, Uniform Reciprocal Enforcement of Support Act may be used to institute action against putative father to enforce support duty, and determination of paternity may be made in context of such action, although requirements of § 742.011 et seq. governing determination of paternity, such as personal service on putative father when complaint is filed in circuit court, must be complied with. Hodge v. Maith, App. 5 Dist., 435 So.2d 387 (1983).

While Uniform Reciprocal Enforcement of Support Act contemplates adjudication of paternity in initiating State, initiating State must have jurisdiction over nonresident, putative father in order to enter valid judgment against him; Act does not grant in personal jurisdiction over nonresident party not otherwise subject to power of initiating State's courts. Id.

Jurisdiction.

Where children had not been born in Pennsylvania, there was no allegation that putative father had ever been in Pennsylvania, and putative father derived no personal or commericial benefit from his alleged children's presence in Pennsylvania, putative father who was resident of Florida lacked sufficient contracts with Pennsylvania to entitle Pennsylvania judgment determining paternity to full faith and credit in Florida enforcement action brought under Uniform Reciprocal Enforcement of Support Act. Hodge v. Maith, App. 5 Dist., 435 So.2d 387 (1983).

§ 88.241. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court or the IV-D agency any payment made by the respondent pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court or the IV-D agency upon request a certified statement of all payments made by the respondent.

HISTORY: (Am.L. 1979, ch. 79-383, eff. Oct. 1, 1979.)

Cases

Construction and application.

Order, which was entered in action brought under Uniform Reciprocal Enforcement of Support Act, was defective in requiring the child support payments to be paid directly to child's mother, rather than to court system of initiating State. Carroll v. Carroll, App., 415 So.2d 102 (1982).

§ 88.251. Additional Duty of Initiating Court.

An initiating court or the IV-D agency shall receive and disburse forthwith all payments made by the respondent or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (Am.L. 1979, ch. 79-383, § 27, eff. Oct. 1, 1979.)

§ 88.255. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lit In aid thereof, it may require the respondent to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the motion being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1979, ch. 79-383, § 28, eff. Oct. 1, 1979.)

§ 88.261. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (Am.L. 1979, ch. 79-383, § 29, eff. Oct. 1, 1979.)

§ 88.271. Rules of Evidence.

In any hearing for the civil enforcement of this act, the court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to a respondent concerning a substantial change in the circumstances of the parties relating to the obligations of support or with respect to paternity pursuant to § 88.235 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one petitioner is unaffected by any interference by another petitioner with rights of custody or visitation granted by a court.

HISTORY: (Am.L. 1979, ch. 79-383, § 30, eff. Oct. 1, 1979.)

Cases

Determination of rights.

Where spouse paying child support can demonstrate substantial change in circumstances, court has authority under Uniform Reciprocal Enforcement of Support Act to require him to make only lesser support payment. Florida Dept. of Health and Rehabilitative Services on Behalf of Ciferni v. Ciferni, App., 429 So.2d 92 (1983).

Enforcement of child support obligation under Uniform Reciprocal Enforcement of Support Act could not be conditioned upon custodian spouse's allowance of visitation. Id.

The Uniform Reciprocal Enforcement of Support Act creates no duty of support, but it does provide means for enforcing duty of support as such duty may exist under law of responding State. Maloney v. Maloney, App., 396 So.2d 1227 (1981).

Former husband was entitled to assert, in action former wife brought under Uniform Reciprocal Enforcement of Support Act to enforce support obligation, his reasonable right to visitation by applying for modification of his original support obligation on basis of wife's alleged interference with visitation rights granted to him. Id.

Where no order was ever entered restraining wife from removing children from jurisdiction of court, but in action for divorce instituted by the wife an order was entered requiring wife to return children to the State and wife refused to do so and subsequently instituted proceedings under Uniform Reciprocal Enforcement of Support Law for support of two minor children, denial of relief to wife should not have been extended to the children who might be in real need of financial assistance from their father, and hence order denying petition for relief would be reversed and cause remanded with directions to conduct hearing to determine rights of the parties. Hill v. Hill, App., 204 So.2d 346 (1967).

§ 88.281. Application of Payments.

A support order made by a court of this State pursuant to this act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (Am.L. 1973, ch. 73-300, § 1, eff. Aug. 5, 1973; L. 1979, ch. 79-383, § 31, eff. Oct. 1, 1979.)

Cases

In general.

Fact that Florida court chose to enforce payment of lesser amount of support under Uniform Reciprocal Enforcement of Support Act would have no effect upon foreign judgment, but arrearages would continue to accumulate subject to appropriate credit for any payments made under Florida order. Florida Dept. of Health and Rehabilitative Services on Behalf of Ciferni v. Ciferni, App., 429 So.2d 92 (1983).

Although the Uniform Reciprocal Enforcement of Support Act is broad enough to permit responding court in action thereunder to initially determine duty of support, this is not permitted when there is previous order establishing support in underlying dissolution of marriage proceeding. Stephens v. Stephens, App., 402 So.2d 1301 (1981).

Relief from confinement in jail for contempt of court for failure to make child support payments in accordance with a Florida divorce decree was not available to petitioner where order of Texas court did not modify his obligation under divorce decree as claimed. Hassig v. Smith, App., 395 So.2d 188 (1981).

This section providing that a support order made by a Florida court pursuant to the Uniform Reciprocal Enforcement of Support Act does not nullify and is not nullified by a support order made by a Florida court pursuant to any other law or by support order made by a court of any other State pursuant to a substantially similar act or other law, regardless of priority of issuance, unless otherwise specifically provided by court, means that a duty of support may be considered and determined in a URESA proceeding de novo, notwithstanding that some other court may previously have entered a support order against the same obligor; a URESA support order will stand even though another court may subsequently issue an order concerning the same duty of support. Ray v. Pentlicki, App., 375 So.2d 875 (1979).

Divorce court which had issued final decree fixing child support at $40 per week "so long as visitation rights. . . are complied with" had authority to enter order suspending support payments while mother was in contempt for failing to comply with visitation provision of such decree notwithstanding mother, who had become Pennsylvania resident subsequent to decree, had initiated action in Pennsylvania through Uniform Reciprocal Enforcement of Support Act. Cochran v. Cochran, App., 236 So.2d 292 (1972).

Modification of support order.

On ex-wife's petition for support under Uniform Reciprocal Enforcement of Support Act, responding court could increase amount of child support payments fixed in prior foreign divorce judgment; disagreeing with Hartley v. Hartley, 465 So.2d 592 (Fla., 1982). Koon v. Boulder County, Dept. of Social Services ex rel. Koon, 468 So.2d 1007 (Fla., 1985).

Jurisdiction.

Florida court was without authority under Uniform Support of Dependents Act, which had been adopted by both Kentucky and Florida, to change or alter prior Kentucky child support payments judgment. Hamilton v. Hamilton, 476 S.W.2d 197 (Ky. 1972).

Clerk's service charge.

Clerk's service charge "for receiving and disbursing domestic support payments" pursuant to § 28.24, applies to payments received and disbursed pursuant to uniform reciprocal support proceedings. Op.Atty.Gen. 070-148, Oct. 27, 1970.

Decisions in other States.

Reducing monthly child support payments of $200, which had been agreed to in 1960 when father was making approximately $9,000 per year, to $100 per month in 1970, when father was making $20,500 per year, in absence of any finding of fact or conclusions justifying such reduction constituted an abuse of discretion. Hamilton v. Hamilton, 476 S.W.2d 197 (Ky.1972).

§ 88.291. Effect of Participation in Proceedings.

Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (Am.L. 1979, ch. 79-383, § 32, eff. Oct. 1, 1979.)

Cases

In general.

In action by former husband, who was Florida resident, against former wife, who was Colorado resident, based on husband's allegation that wife's prior action against him under Uniform Reciprocal Enforcement of Support Act was based on filing of false statements, trial court did not have jurisdiction over wife in view of section of URESA providing that participation in proceedings under Act does not confer upon court jurisdiction over any of the parties in any other proceeding. Scales v. Scales, 469 So.2d 855 (Fla.,App.4 Dist., 1985).

While section of Uniform Reciprocal Enforcement of Support Act providing that participation in any proceedings under Act does not confer upon any court jurisdiction over any of the parties in any other proceeding does not bar a court from imposing contempt or other sanctions, it bars extension of jurisdiction over other actions between the parties arising out of the URESA proceedings. Id.

A foreign judgment entered pursuant to filiation proceedings is entitled to full faith and credit where the respondent specially appeared unsuccessfully to challenge the jurisdiction and no appeal therefrom was prosecuted. Op.Atty.Gen. 071-392, Dec. 16, 1971.

Counterclaim for divorce.

Intent of Uniform Reciprocal Enforcement of Support Law was to confer jurisdiction on circuit court solely for purpose of enforcing reciprocal support order; thus, husband's counterclaim for divorce, in action by wife under this section to require husband to pay arrearages due under out-of-State support order, should have been dismissed. Simpson v. Simpson, App., 247 So.2d 792 (1971).

Husband, residing in Florida, could not maintain counterclaim for divorce in proceeding, commenced by wife in Ohio for support of wife and minor son and transferred to Florida court pursuant to Uniform Reciprocal Enforcement of Support Law, particularly since Florida Uniform Reciprocal Enforcement of Support Law expressly declares that participation in any proceeding thereunder shall not give court jurisdiction of any of parties thereto in any other proceedings. Blois v. Blois, App., 138 So.2d 373 (1962).

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 88.331 to 88.371.

§ 88.295. Intrastate Application.

Cases entered into the Revised Uniform Reciprocal Enforcement of Support Act (1968) system which must be handled on an intrastate basis shall be transmitted to the

appropriate program attorney to be filed and processed in accordance with the procedures specified in §§ 409.2554 to 409.2597.

HISTORY: (L. 1979, ch. 79-383, § 33, eff. Oct. 1, 1979.)

§ 88.297. Appeals.

If the prosecuting attorney is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State.

In either case, expenses of an appeal of an IV-D case may be paid from funds appropriated for the IV-D program.

HISTORY: (L. 1979, ch. 79-383, § 24, eff. Oct. 1, 1979.)

§ 88.301. Repealed by L. 1977, ch. 77-104, § 21, eff. Aug. 2, 1977.

§ 88.311. Uniformity of Interpretation.

This act shall be so construed as to effectuate its general purpose to make uniform the law of those State which enact it.

HISTORY: (Am.L. 1979, ch. 79-383, § 35, eff. Oct. 1, 1979.)

Part IV: Registration of Foreign Support Orders

§ 88.321. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 88.331 to 88.371.

HISTORY: (L. 1959, ch. 59-393, § 1.)

Cases

In general.

A Uniform Reciprocal Enforcement of Support Act order rendered pursuant to this chapter is not the exclusive means in which outstanding child support payments may be collected. Op.Atty.Gen. 077-77, July 26, 1977.

§ 88.331. Registration.

The obligee may register the foreign support order in a circuit court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (L. 1959, ch. 59-393, § 1.)

§ 88.341. Registry of Foreign Support Orders.

The clerk of the circuit court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

HISTORY: (L. 1959, ch. 59-393, § 1.)

§ 88.345. Official to Represent Petitioner.

If this State is acting either as a rendering or a registering State, the prosecuting attorney upon the request of the court or the Department of Health and Rehabilitative Services shall represent the petitioner in proceedings under this part.

HISTORY: (L. 1979, ch. 79-383, § 36, eff. Oct. 1, 1979.)

§ 88.351. Registration Procedure; Notice.

(1) A petitioner seeking to register a foreign support order in a circuit court of this State shall transmit to the clerk of the circuit court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made; and

(c) Statement, verified and signed by the petitioner, showing the post office address of the petitioner, the last known place of residence and post office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution and a list of the States in which the order is registered.

Upon receipt of these documents, the clerk of the circuit court, without payment of a filing fee or other cost to the petitioner, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this act.

(2) Promptly upon registration, the clerk of the circuit court shall send by certified or registered mail to the respondent at the address given a notice of the registration with a copy of the registered support order and the post office address of the petitioner. He shall also docket the case and notify the prosecuting attorney and the IV-D agency of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (Am.L. 1979, ch. 79-383, § 37, eff. Oct. 1, 1979.)

§ 88.361. (Repealed by L. 1979, ch. 79-383, § 37, eff. Oct. 1, 1979.)

Cases

In general.

In suit, in which divorced wife sought to establish her Georgia money judgment against divorced husband as a Florida judgment and to obtain such other relief as court deemed proper, in which she sought damages for breach of agreement and specific performance of such agreement and in which she sought to recover support for parties' daughter under Uniform Reciprocal Enforcement of Support Act, complaint and amendments thereto sufficiently advised divorced husband of nature of the suit and invoked equitable jurisdiction of trial court. Grotnes v. Grotnes, App., 338 So.2d 1122 (1976).

Florida court did not have authority to adjudge divorced husband in contempt in regard to his failure to pay the alimony and child support required by Georgia divorce decree. Id.

Trial court improperly reduced foreign alimony award to ex-wife where the only change of circumstances was an increase of the needs of former wife and increase in ability of ex-husband to pay. Friedly v. Friedly, App., 303 So.2d 50 (1974).

Claim that ex-husband would be financially embarrassed, in that he might have to dispose of investments in order to satisfy judgments for alimony in arrears, was not a justifiable reason, in equity or otherwise, for refusal to require payment of the just and admitted debt. Id.

A foreign judgment entered pursuant to filiation proceedings is entitled to full faith and credit where the respondent specially appeared unsuccessfully to challenge the jurisdiction and no appeal therefrom was prosecuted. Op.Atty.Gen. 071-392, Dec. 16, 1971.

Clerk's service charge.

Clerk's service charge "for receiving and disbursing domestic support payments" pursuant to § 28.24, applies to payments received and disbursed pursuant to uniform reciprocal support proceedings. Op.Atty.Gen. 070-148, Oct. 27, 1970.

§ 88.371. Effect of Registration; Enforcement Procedure.

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(2) The respondent has 25 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the respondent may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment and matters concerning a substantial change in the circumstances

of parties relating to the obligation of support. If he shows to the court that an appeal from the order is pending or will be take or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (Am.L. 1979, ch. 79-383, § 38, eff. Oct. 1, 1979.)

Cases

In general.

Florida court had authority to order divorced husband, who was divorced under a Georgia decree, who had been ordered by Florida court to pay $2,000 in a uniform reciprocal enforcement of support action and who had only paid $1,000, to pay the remaining $1,000 within ten days or be subject to arrest and confinement for contempt of court. Grotnes v. Grotnes, App., 338 So.2d 1122 (1976).

In suit, in which divorced wife sought to establish her Georgia money judgment against divorced husband as a Florida judgment and to obtain such other relief as court deemed proper, in which she sought damages for breach of agreement and specific performance of such agreement and in which she sought to recover support for parties' daughter under Uniform Reciprocal Enforcement of Support Act, complaint and amendments thereto sufficiently advised divorced husband of nature of the suit and invoked equitable jurisdiction of trial court. Id.

Florida money judgment for past due alimony and support money under Georgia divorce decree could be enforced by equitable remedies customary in enforcement of decrees for alimony and support money; receding from Clark v. Muldrew, 308 So.2d 186. Id.

Trial court improperly reduced foreign alimony award to ex-wife where the only change of circumstances was an increase of the needs of former wife and increase in ability of ex-husband to pay. Friedly v. Friedly, App., 303 So.2d 50 (1974).

Claim that ex-husband would be financially embarrassed, in that he might have to dispose of investments in order to satisfy judgments for alimony in arrears, was not a justifiable reason, in equity or otherwise, for refusal to require payment of the just and admitted debt. Id.

A foreign judgment entered pursuant to filiation proceedings is entitled to full faith and credit where the respondent specially appeared unsuccessfully to challenge the jurisdiction and no appeal therefrom was prosecuted. Op.Atty.Gen. 071-392, Dec. 16, 1971.

Contempt proceedings.

Order, which required divorced father to pay $1,000 in child support within ten days or be subject to arrest and confinement for contempt of court, was defective in failing to specify a definite term of imprisonment. Grotnes v. Grotnes, App., 338 So.2d 1122 (1976).

Florida court did not have authority to adjudge divorced husband in contempt in regard to his failure to pay the alimony and child support required by Georgia divorce decree. Id.

Effect of nonregistration.

Mother, a Pennsylvania resident, was not entitled to increase in child support payments of father, a Florida resident, from amount in Pennsylvania divorce decree, where increase was sought under Uniform Reciprocal Enforcement of Support Act and Pennsylvania order was not registered in Florida. Hartley v. Hartley, 465 So.2d 592 (Fla.App.2 Dist., 1985).

Cases Under Prior Statute

§ 88.011. Short Title.

Construction and application.

Uniform Reciprocal Enforcement of Support Acts are designed to provide expedient and inexpensive "interstate" procedures for enforcing support of family. Clark v. Clark, App., 139 So.2d 195 (1962).

While the purpose of the 1953 Florida Uniform Support of Dependents Law was to secure support for "dependent wives and children" only, the 1955 Uniform Reciprocal Enforcement of Support Law applies to any persons to whom a duty of support is owed, and judgment of dismissal under 1953 Act was not res judicata on proceedings brought under 1955 Act. Thompson v. Thompson, 93 So.2d 90 (1957).

The Uniform Reciprocal Enforcement of Support Law was intended to provide a simplified two-State procedure by which the obligor's duty to support an obligee residing in another State may be enforced expeditiously and with a minimum of expense to the obligee. Id.

Duty to support.

Father was obligated to support or contribute to support of unmarrried adult daughter, who lived with divorced mother and, since birth, had been mentally and physically unable to care for or support herself. Fincham v. Levin, App., 155 So.2d 883 (1963).

Application of provisions of Uniform Reciprocal Enforcement of Support Law are contingent upon duty of support and a person may not be extradited if there is not imposed upon him duty to support an illegitimate child; duty of support is only real issue in proceedings under uniform law. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Illegitimate children.

Where there had been no judicial determination in Florida that habeas corpus petitioner was father of illegitimate child in North Carolina and extradition demand did not state that petitioner was present in North Carolina during period of nonsupport with which he was charged, laws of North Carolina as to duty of support could not be applied and, there being no duty of support imposed upon petitioner, he could not be extradited under Uniform Reciprocal Enforcement of Support Law. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

To compel resident of Florida, who was present in Florida during time he was charged with committing crime of nonsupport of illegitimate child in State of North Carolina, to support child according to laws of North Carolina would violate Florida resident's right to equal protection of laws. Id.

Counterclaim for divorce.

Husband, residing in Florida, could not maintain counterclaim for divorce in proceeding, commenced by wife in Ohio for support of wife and minor son and transferred to Florida court pursuant to Uniform Reciprocal Enforcement of Support Law, particularly since Florida Uniform Reciprocal Enforcement of Support Law expressly declares that participation in any proceeding thereunder shall not give court jurisdiction of any parties thereto in any other proceedings. Blois v. Blois, App., 138 So.2d 373 (1962).

Extradition.

Extradition demands made pursuant to Uniform Reciprocal Enforcement of Support Law must comply with requirements governing form of demands under Uniform Criminal Extradition Law, except it is not necessary to allege that accused was president in demanding State at time of commission of alleged crime and that he thereafter fled from justice. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Habeas corpus petitioner could not, after remand for extradition, by petition submit to jurisdiction of Florida court under provisions of Uniform Reciprocal Enforcement of Support Law for determination as to paternity of illegitimate child in North Carolina since participation in any proceedings under uniform law does not confer jurisdiction upon court of any parties thereto in any other proceedings. Id.

A person who is about to be extradited under criminal enforcement provisions of Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in State of his residence and complying with such court's order as to the amount of support he should pay to obligee, even though the obligee-resident of the demanding State has not initiated proceedings under the civil enforcement provisions of the act. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

Issues, proof, and variance.

Question of need, as determined in initiating State, in proceeding under Uniform Reciprocal Enforcement of Support Act, is acceptable in Florida as prima facie correct. Clark v. Clark, App., 139 So.2d 195 (1962). Duty of support is only real issue in proceeding under Uniform Reciprocal Enforcement of Support Law. Blois v. Blois, App., 138 So.2d 373 (1962).

Review.

Respondent-appellant, having been duly served but having consciously failed to answer or testify in rebuttal, in proceedings under Uniform Reciprocal Enforcement of Support Act could not question child support order appealed from on ground that petitioner had not testified in person or by deposition. Clark v. Clark, App., 139 So.2d 195 (1962).

Decisions in other States.

Identity in language was not essential to reciprocal operation of the Florida Uniform Support of Dependents Law and the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., both of which were applicable in another State having "similar" laws. Com. ex rel. Shaffer v. Shaffer, 175 Pa.Super. 100, 103 A.2d 430, 42 A.L.R. 2d 761 (1958).

The Florida Uniform Support of Dependents Law and the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., had reciprocal operation, though the Pennsylvania Act had criminal enforcement provisions while the Florida Act did not, and though Florida Act related to support of wife and children only while Pennsylvania Act dealt with support of all dependents. Id.

In proceeding on petition by divorced wife, who was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act, requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, it was necessary for Illinois County Court, in determining whether husband was providing reasonable and proper support for child, to take into account amount of support which husband might be paying under Minnesota divorce decree. Allain v. Allain, 164 N.E.2d 611, 24 Ill.App.2d 400 (1960).

In proceeding on petition by divorced wife, who was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act, requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, needs of child, income of both parents, and other relevant circumstances were matters to be considered by Illinois County Court in determining whether former wife was entitled to relief prayed in petition. Id.

Provision for child support made by Minnesota divorce decree did not preclude Illinois County Court from granting relief to wife, who resided in Florida with minor child, and had filed petition for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring husband, who was member of Air Force and stationed in Illinois, to support child. Id.

Where former husband had personally appeared at trial of cause in Illinois County Court in proceeding on petition by divorced wife, who was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, appointment of guardian ad litem by Florida court prior to date upon which that court took wife's testimony for transmittal to Illinois court, was not required under Soldiers' and Sailors' Civil Relief Act. Id.

Nature of proceeding.

Proceeding under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., in Court of Quarter Sessions, was not only quasicriminal in nature, and husband was not entitled to be confronted by his wife and her witnesses. Com. ex rel. Shaffer v. Shaffer, 175 Pa.Super. 100, 103 A.2d 430, 42 A.L.R.2d 761 (1958).

Notice of hearing.

Under provision of Illinois Reciprocal Enforcement of Support Act setting forth procedure to be followed, Florida court, in proceeding on petition by divorced wife, who

was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, was not required to give husband notice of time and place of hearing required after entry of his verified denial of allegations of petition. Allain v. Allain, 164 N.E.2d 611, 24 Ill.App.2d 400 (1960).

On appeal from judgment for divorced wife, who was residing in Florida with minor child, in proceeding on her petition for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, wherein record failed to show that husband had availed himself of right to cross-examine wife either by means of depositions or written interrogatories, husband could not compliance of failure of Florida court to give notice of time and place of hearing required after entry of his verified denial of allegations of petition. Id.

Evidence.

In proceeding on petition by divorced wife, who was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, evidence pertaining to both husband's income, and expense entailed in maintaining child justified order of Illinois court requiring husband to pay $50 monthly for support of child. Allain v. Allain, 164 N.E.2d 611, 24 Ill.App.2d 400 (1960).

Review.

Where divorced husband did not object, at hearing before Illinois court, to admission of divorced wife's testimony on ground that guardian ad litem had not been appointed for husband prior to date that Florida court took her testimony for transmittal to Illinois court in proceeding on petition by wife, who was residing in Florida with minor child, for order pursuant to Florida Uniform Reciprocal Enforcement of Support Act requiring divorced husband, who was member of Air Force and stationed in Illinois, to support child, such objection was not available on appeal. Allain v. Allain, 164 N.E.2d 611, 24 Ill.App.2d 400 (1960).

In proceeding under the Pennsylvania Uniform Enforcement of Support Law, the Commonwealth of Pennsylvania had such interest in order of Court of Quarter Sessions as would give the Commonwealth the right to appeal. Com. ex rel. Shaffer v. Shaffer, 175 Pa. Super. 100, 103 A.2d 430, 42 A.L.R.2d 761 (1958).

In proceeding under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Id.

§ 88.021 Purposes.

In general.

Uniform Reciprocal Enforcement of Support acts are designed to provide expedient and inexpensive "interstate" procedures for enforcing support of family. Clark v. Clark, App., 139 So.2d 195 (1962).

The purpose of the Uniform Reciprocal Enforcement of Support Law is to compel the obligor to support his dependents and not primarily to subject him to criminal punishment for a past offense. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

Issues, proof and variance.

Duty of support is only real issue in proceeding under Uniform Reciprocal Enforcement of Support Law. Blois v. Blois, App., 138 So.2d 373 (1962).

Counterclaim for divorce.

Husband, residing in Florida, could not maintain counterclaim for divorce in proceeding, commenced by wife in Ohio for support of wife and minor son and transferred to Florida court pursuant to Uniform Reciprocal Enforcement of Support Law, particularly since Florida Uniform Reciprocal Enforcement of Support Law expressly declares that participation in any proceeding thereunder shall not give court jurisdiction of any of parties thereto in any other proceedings. Blois v. Blois, App., 138 So.2d 373 (1962).

Extradition.

Where the crime for which extradition was sought was abandonment of minor children, provision of uniform enforcement of support act providing for extradition was applicable, and was not inconsistent with extradition provisions of the State and Federal constitutions, and therefore, extradition could be made even though demand did not contain an express allegation that petitioner was present in demanding State at the time of the commission of the crime. State v. Bennett, 90 So.2d 43 (1956).

§ 88.041. Remedies Additional to Those Now Existing.

Purposes of Act.

The Uniform Reciprocal Enforcement of Support Law was intended to provide a simplified two-State procedure by which the obligor's duty to support an obligee residing in another State may be enforced expeditiously and with a minimum of expense to the obligee. Thompson v. Thompson, 93 So.2d 90 (1957).

Jurisdiction.

Where a divorce decree entered by the circuit court of Monroe County, Florida in a suit between residents of that county, awarded the custody of the minor children to the mother and required the father to make payments for their support, and where the mother thereafter left the State with the children and took up residence in another State, and where the father continues to reside in Monroe County, the circuit court that entered the decree may entertain a proceeding brought by the mother against the father under the uniform reciprocal enforcement of support law, and it would not be necessary for the mother to have a rule issued against the father requiring him to show cause why he should not be held in contempt for failure to comply with the support provisions of the divorce decree. 1962 Op.Atty.Gen. 062-64, May 4, 1962.

Where wife had obtained divorce in Volusia County, Florida, but later became a resident of Connecticut and brought proceedings under Connecticut law and 1955 Uniform

Reciprocal Enforcement of Support Law, which by its terms was designed to provide a remedy entirely separate from and independent of any remedy existing under other applicable provisions of law, the Circuit Court of Duval County, the place of ex-husband's residence had jurisdiction of the proceedings and could enforce the duty of support decreed in the divorce proceedings by a sister county. Thompson v. Thompson, 93 So.2d 90 (1957).

§ 88.051. Extent of Duties of Support.

In general.

Application of provisions of Uniform Reciprocal Enforcement of Support Law are contingent upon duty of support and a person may not be extradited if there is not imposed upon him duty to support an illegitimate child; duty of support is only real issue in proceedings under uniform law. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Under Uniform Reciprocal Enforcement of Support Law, obligor will be subject to support duties imposed by laws of State in which he is found, that is, responding State, except that duties of support may be imposed under laws of any State where obligor was present during period for which support is sought. Id.

§ 88.061. Interstate Rendition.

Construction and application.

The purpose of the Uniform Reciprocal Enforcement of Support Law is to compel the obligor to support his dependents and not primarily to subject him to criminal punishment for a past offense. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

Law governing.

Under Uniform Reciprocal Enforcement of Support Law, question as to whether habeas corpus petitioner, whose extradition had been requested by North Carolina for trial on charge of committing crime of nonsupport of illegitimate child, had duty of support must be determined according to laws of Florida. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Under Uniform Reciprocal Enforcement of Support Law, obligor will be subject to support duties imposed by laws of State in which he is found, that is, responding State, except that duties of support may be imposed under laws of any State where obligor was present during period for which support is sought. Id.

Failure to provide for support.

Legislature, by using the words "failing to provide for the support of a person" in a provision of the Uniform Enforcement of Support Act providing for extradition of a person charged in a demanding State with the crime of failing to provide for the support of a person in such other State, intended, by this language, to encompass all forms of criminal nonsupport with a view to facilitate extradition of persons seeking to evade their obligations by flight, and therefore, the crime of abandonment of minor children fell within the terms of such statute. State v. Bennett, 90 So.2d 43 (1956).

Where ex-wife can and does make proper timely criminal complaint for nonsupport, executive authority of demanding State may request return of accused under this section, if demanding State has enacted Uniform Reciprocal Enforcement of Support Act, notwithstanding facts that man sought to be extradited has resided in State for seven years and that no children have been born to marriage. 1956 Op.Atty.Gen. 056-308, Oct. 23, 1956.

Form and contents of demand.

Extradition demands made pursuant to Uniform Reciprocal Enforcement of Support Law must comply with requirements governing form of demands under Uniform Criminal Extradition Law, except is it not necessary to allege that accused was present in demanding State at time of commission of alleged crime and that he thereafter fled from justice. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Form of demand requesting extradition of habeas corpus petitioner for trial on charge of committing crime of non-support of illegitimate child and alleging that petitioner was present in State of Florida on date of withholding support was sufficient under interstate rendition provision of Uniform Reciprocal Enforcement of Support Law to authorize extradition if petitioner had duty to support child. Id.

Where the crime for which extradition was sought was abandonment of minor children, provision of uniform enforcement of support act providing for extradition was applicable, and was not inconsistent with extradition provisions of the State and Federal constitution, and therefore, extradition could be made even though demand did not contain an express allegation that petitioner was present in demanding State at the time of commission of the crime. State v. Bennett, 90 So.2d 43 (1956).

Relief from extradition.

Where husband, by suit in equity under this section and § 88.071, sought relief from extradition on charges of desertion and nonsupport preferred by wife in another State and wife answered and counterclaimed for separate maintenance, child support and attorney's fees, granting husband leave thereafter to amend his suit to seek divorce on grounds of extreme cruelty, desertion and adultery was not abuse of discretion. Dworkis v. Dworkis, App., 111 So.2d 70, 72 A.L.R.2d 1189 (1959).

A person who is about to be extradited under criminal enforcement provisions of Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in State of his residence and complying with such court's order as to the amount of support he should pay to obligee, even though the obligee-resident of the demanding State has not initiated proceedings under the civil enforcement provisions of the act. Jackson v. Hall, Sup., 97 So.2d (1957).

§ 88.081. Choice of Law.

Construction and application.

An action may be maintained against a Florida resident for support of his needy parent only when the action is brought to enforce a duty to support such parent, and such

duty was imposed on such Florida resident by the laws of another State where he was present during period of time for which support is sought. 1957 Op. Atty.Gen. 057-262, Aug. 29, 1957.

When a support action is maintained under the Uniform Reciprocal Enforcement of Support Law against an obligor residing in Florida for purpose of procuring prospective and continuing support for the future, Florida laws govern questions whether obligor is legally liable for such support. Id.

Law governing.

Under Uniform Reciprocal Enforcement of Support Law, obligor will be subject to support duties imposed by laws of State in which he is found, that is, responding State, except that duties of support may be imposed under laws of any State where obligor was present during period for which support is sought. Clarke v. Blackburn, App., 151 So.2d 325 (1963).

Under Uniform Reciprocal Enforcement of Support Law, question as to whether habeas corpus petitioner, whose extradition has been requested by North Carolina for trail on charge of committing crime of non-support of illegitimate child, had duty of support must be determined according to laws of Florida. Id.

In proceedings under uniform reciprocal enforcement of support act, initiated in District of Columbia, question whether defendant owes a duty of support and complainant is qualified to maintain the action is determined by the law of the District of Columbia although the courts of the responding State must determine, under their law, whether the defendant's conduct constitutes a violation of his parental duty of support and whether the complainant is entitled to support money. Cobbe v. Cobbe, D.C. Mun.App., 163 A.2d 333 (1960).

Jurisdiction.

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under Uniform Reciprocal Enforcement of Support Act. Cobbe v. Cobbe, D.C. Mun. App., 163 A.2d 333 (1960).

Relief from extradition.

A person who is about to be extradited under criminal enforcement provisions of Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in State of his residence and complying with such court's order as to the amount of support he should pay to obligee, even though the obligee-resident of the demanding State has not initiated proceedings under the civil enforcement provisions of the act. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

§ 88.091. Remedies of a State or Political Subdidivision Thereof Furnishing Support.

In general.

Where action under Uniform Reciprocal Enforcement of Support Act is brought by State or its agency which has furnished support under provisions of this section, it is not necessary that insolvent person to whom support is due, to avail herself of benefits of recovery, file affidavit and certificate required by § 88.151 if she is to commence proceeding without payment of costs. 1955 Op.Atty.Gen. 055-211, August 22, 1955.

§ 88.121. Official to Represent Plaintiff in Proceeding Initiated in this State.

In general.

Husband residing in Florida, could not maintain counterclaim for divorce in proceeding, commenced by wife in Ohio for support of wife and minor son and transferred to Florida court pursuant to Uniform Reciprocal Enforcement of Support Law, particularly since Florida Uniform Reciprocal Enforcement of Support Law expressly declares that participation in any proceeding thereunder shall not give court jurisdiction of any of parties thereto in any other proceedings. Blois v. Blois, App., 138 So.2d 373 (1962).

§ 88.131. Petition for a Minor.

In general.

In proceedings brought by child in District of Columbia, against her father, who was in Florida, under uniform reciprocal enforcement of support act, where mother in District of Columbia had custody, but due to mother's illness decree was entered by Florida court changing custody to father and abating father's support payments, and later child, with father's consent, returned to live with mother, the child showed an obligor-obligee relationship sufficient to establish, under law of District of Columbia, a prima fac case for support. Cobbe v. Cobbe, D.C.Mun.App., 163 A.2d 333 (1960).

A person may institute proceedings for a minor for support under uniform reciprocal enforcement of support act regardless of fact that a decree, granting custody to another is outstanding. Id.

Jurisdiction.

Where mother in District of Columbia had custody of child but due to mother's illness decree was entered by Florida court changing custody to father in Florida, and abating father's support payments, and later child, with father's consent, returned to live with mother, the decree changing custody to father did not deprive District of Columbia court of jurisdiction of complaint initiating proceedings by child against father for support under uniform reciprocal enforcement of support act. Cobbe v. Cobbe, D.C. Mun.App., 163 A.2d 383 (1960).

§ 88.141. Duty of Court of this State as Initiating State.

In general.

A person who is about to be extradited under criminal enforcement provisions of Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in State of his residence and complying with such court's order as to the amount of support he should pay to obligee, even though the obligee-resident of the demanding State has not initiated proceedings under the civil enforcement provisions of the act. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

§ 88.151. Costs and Fees.

Construction and application.

Under this section a mother is not required to pay court costs in this State when she initiates a support action in Florida under the Reciprocal Enforcement of Support Act against a father residing in another State; however, the question of whether court costs in such a case are to be waived in the State in which the father resides depends upon the law of that State, and not upon the law of Florida. 1959 Op.Atty.Gen. 059-91, May 4, 1959.

Under this section relating to costs and fees in actions brought under Uniform Reciprocal Enforcement of Support Act, where action is brought by county, no order can be made requiring county to pay clerk's fee but in all other cases regardless of whether Florida is initiating or responding State, court may, where plaintiff is insolvent, and defendant is not compelled to pay the clerk's costs, order them to be paid by the county. 1955 Op.Atty.Gen. 055-226, Sept. 1, 1955.

Where solvent plaintiff files proceeding in Florida under Uniform Reciprocal Enforcement of Support Act and Florida is either the initiating or respondent State, clerk is entitled to demand filing fee provided by § 28.241(1) or appropriate fee allowed by special population act, as case may be. Id.

Where action under Uniform Reciprocal Enforcement of Support Act is brought by State or its agency which has furnished support, under provisions of § 88.091, it is not necessary that an insolvent person to whom support is due, to avail herself of benefits of recovery, file affidavit and certificate required under this section if she wishes to commence proceeding without payment of costs. 1955 Op.Atty.Gen. 055-211, August 22, 1955.

The provisions of this section providing that where action under Uniform Reciproal Enforcement of Support Act is brought by or through State, no clerk's fees shall be required, but that if order is entered, order shall be deemed to include them applies only where actions are brought by or through the State. Id.

Waiver of costs.

Subsection (2) of this section, as amended in 1957, relative to the waiver of court costs and fees, applies only where a support action is maintained under the Reciprocal Enforcement of Support Law by a plaintiff residing in one State against a defendant residing in another State. 1959 Op.Atty.Gen. 059-102, June 3, 1959.

§ 58.09, as amended in 1957, relative to the waiver of court costs, is the only law which permits the waiver of court costs in support actions instituted in this State when both parties reside in this State. Id.

In only those States which have statutes requiring a father to support his illegitimate children can an action be maintained in favor of such children under the Reciprocal Enforcement of Support Act, and, in the States in which such actions can be brought under said Act, the same rules as to waiver of court costs would probably be applied as is applied in those States to actions brought under said Act in behalf of wives and legitimate children. 1959 Op.Atty.Gen. 059-91, May 4, 1959.

§ 88.211. Order of Support.

In general.

A person who is about to be extradited under criminal enforcement provisions of Uniform Reciprocal Enforcement of Support Law may relieve himself from such extradition by voluntarily submitting himself to a court of competent jurisdiction in State of his residence and complying with such court's order as to the amount of support he should pay to obligee, even thought the obligee-resident of the demanding State has not initiated proceedings under the civil enforcement provisions of the act. Jackson v. Hall, Sup., 97 So.2d 1 (1957).

§ 88.281. Application of Payments.

Purpose of Act.

The Uniform Reciprocal Enforcement of Support Law was intended to provide a simplified two-State procedure by which the obligor's duty to support an obligee residing in another State may be enforced expeditiously and with a minimum of expense to the obligee. Thompson v. Thompson, 93 So.2d 90 (1957).

Jurisdiction.

Where wife had obtained divorce in Volusia County, Florida, but later became a resident of Connecticut and brought proceedings under Connecticut law and 1955 Uniform Reciprocal Enforcement of Support Law, which by its terms was designed to provide a remedy entirely separate from and independent of any remedy existing under other applicable provisions of law, the circuit court of Duval County, the place of ex-husband's residence had jurisdiction of the proceedings and could enforce the duty of support decreed in the divorce proceedings by a sister county. Thompson v. Thompson, 93 So.2d 90 (1957).

GEORGIA
GA. CODE ANN. §§ 19-11-40 to 19-11-81

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Cases

In general.

This article does not deny due process of law in violation of Federal and State Constitutions. Dansby v. Dansby, 222 Ga. 118, 149 S.E.2d 252 (1966).

Support award in URESA action may vary from prior decree.

Since the Uniform Reciprocal Enforcement of Support Act is an independent proceeding which does not affect, and is not bound by, prior foreign judgments, a responding court may enter a support order that is greater than, as well as less than, a prior judgment. State ex rel. McKenna v. McKenna, 253 Ga. 6, 315 S.E.2d 885 (1984), rev'g 169 Ga.App. 319, 312 S.E.2d 380 (1983).

Cited in Lamb v. Lamb,, 241 Ga 545, 246 S.E.2d 665 (1978); Helms v. Jones, 631 F.2d 211 (5th Cir. 1980); Woodes v. Morris, 247 Ga. 771, 279 S.E.2d 704 (1981); East v. Pike, 163 Ga.App. 375, 294 S.E.2d 597 (1982).

§ 19-11-40. Short Title.

This article may be cited as the "Uniform Reciprocal Enforcement of Support Act."

HISTORY: (Ga.L. 1958, p. 34, § 34.)

Cases

Cited in Jones v. Helms, 101 S.Ct. 2434, 450 U.S. 977, 69 L.Ed. 2d 118 (1981); Francis v. Pittman, 290 S.E.2d 288 (Ga.App., 1982).

This article is not to be construed as applicable only to cases of actual nonsupport. Zimmerman v. Zimmerman, 131 Ga.App. 567, 206 S.E.2d 583 (1974).

Due process of law, guaranteed by Federal and State Constitutions, is not denied by this article. Dansby v. Dansby, 222 Ga.118, 149 S.E.2d 252 (1966).

§ 19-11-41. Purposes of Article.

The purposes of this article are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (Ga.L. 1958, p. 34, § 1.)

Cases

Cited in Earley v. Earley, 300 S.E.2d 814 (Ga.App., 1983).

This article should not be construed as denying resident obligors the right to a jury trial pursuant to an allegation of a change of condition, despite the "prosecution" occuring in a quasi-criminal hearing with a law enforcement official representing the obligee. Bisno v. Biloon, 161 Ga.App. 351, 291 S.E.2d 66 (1982).

This article is intended to improve, not to impair, enforcement of the duty of support. Ray v. Ray, 247 Ga. 467, 277 S.E.2d 495 (1981).

While this article has intrastate application and an intrastate support obligor has the right to bring a suit to obtain modification, this article may not be used to precipitate such an action. Ray v. Ray, 247 Ga. 647, 277 S.E.2d 495 (1981).

§ 19-11-42. Definitions.

As used in this article, the term:

(1) "CERTIFICATION" means certification in accordance with the laws of the certifying State.

(2) "COURT" means the superior court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(3) "INITIATING STATE" means any State in which a proceeding pursuant to this article or a substantially similar reciprocal law is commenced.

(4) "LAW" includes both common law and statute law.

(5) "OBLIGEE" means any person to whom a duty of support is owed.

(6) "OBLIGOR" means any person owing a duty of support.

(7) "REGISTER" means the entry of an order by a superior court of this State making a foreign support order a support order of this State.

(8) "REGISTERING COURT" means any superior court of this State in which the support order of the rendering State is registered.

(9) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(10) "STATE" includes:

(A) The District of Columbia and any State, territory, or possession of the United States or any foreign jurisdiction in which this article or a substantially similar reciprocal law has been enacted; and

(B) Any province or territory of the Dominion of Canada declared to be a reciprocating State by the Attorney General pursuant to Code § 19-11-44.

(11) "SUPPORT ORDER" means any judgment, decree, or order of support, whether temporary or final and whether subject to modification, revocation, or remission, regardless of the kind of action in which it is entered, provided that custody, visitation

rights, property settlement, and all matters other than support are specifically excluded from enforcement under this article.

HISTORY: (Ga.L. 1958, p.34, § 2;, Ga.L. 1975, p. 818, § 1; Ga.L. 1979, p. 938, § 2; Ga.L. 1982, p. 3, § 19; Ga.L. 1984, p. 613, § 1.)

§ 19-11-43. Duty of Support Defined; Criteria for Determining Existence of Duty of Support.

"Duty of support" includes any duty of support imposed or imposable by law or by any court order, decree, or judgment, whether interlocutory or final, and whether incidental to a proceeding for divorce, judicial (legal) separation, separate maintenance, or otherwise; for purposes of this article, in determining the existence of a duty of support, the following criteria may be considered, without limitation:

(1) A person in one State is declared to be liable for the support of the person's spouse, in conformity with the support laws of this State, and for the support of any child or children of his under 18 years of age and residing or found in the same State or in another State having substantially similar or reciprocal laws; and, if the person is possessed of sufficient means or is able to earn such means, he may be required to pay for this support a fair and reasonable sum according to his means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this article. Notwithstanding the fact that either spouse has obtained in any State or county a final decree of divorce or separation from the other spouse or a decree dissolving their marriage, the obligor under this Code section shall be deemed legally liable for the support under this article of any dependent child of the marriage, whether or not there has been an award of alimony or support for the child or children;

(2) The parents in one State are declared to be severally liable for the support of a child 18 years of age or older, residing or found in the same State or in another State having substantially similar or reciprocal laws, whenever the child is unable to maintain himself and is likely to become a public charge;

(3) A child or children born of parents who, at any time prior or subsequent to the birth of the child, have entered into a civil or religious marriage ceremony shall be deemed the legitimate child or children of both parents, regardless of the validity of the marriage;

(4) A child or children born to parents who held or hold themselves out as husband and wife by virtue of a common-law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed the legitimate child or children of both parents;

(5) A common-law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed to be a valid marriage for purposes of this article; and

(6) Whenever a person has been adjudicated by a court of competent jurisdiction as the parent of an illegitimate child, the person shall be legally liable for the support of the child in the same manner in which the person would owe the duty of support if the child were a legitimate child.

HISTORY: (Ga.L. 1958, p. 34, § 2; Ga.L. 1979, p. 466, § 45.)

Cases

Under the Uniform Reciprocal Enforcement of Support Act, the court having jurisdiction in the responding State makes an independent determination of a "fair and reasonable sum" irrespective of whether there is a prior decree; and if a different amount is ordered paid, the other judgment is not modified but sums paid under either are credited to the other. State ex rel. McKenna v. McKenna, 315 S.E.2d 885 (Ga., 1984), rev'g 312 S.E.2d 380 (Ga., 1983).

A contempt action to collect arrearages which accrued while a child was under 18 may be filed even though the child on whose behalf the action is brought is legally an adult at the time of the action. Johnson v. State, 306 S.E.2d 756 (Ga.App., 1983).

A putative father has a duty to support his children, whether legitimate or illegitimate, and this article may be applied compelling him to do so. Wilson v. Chumney, 96 Ga.App. 258, 99 S.E.2d 736 (1957).

§ 19-11-44. Declaration of Reciprocating Status of Canadian Province or Territory by Attorney General.

Where the Attorney General is satisfied that reciprocal provisions will be made by any province or territory of the Dominion of Canada, the Attorney General may declare the province or territory to be a reciprocating State for the purpose of this article. Any such order declaring that a province or territory is a reciprocating State may be revoked by the Attorney General; and thereupon the province or territory with respect to which the order was made shall cease to be a reciprocating State for the purpose of this article; provided, however, that the revocation shall not affect any actions which have been adjudicated in the responding State or which have been received by this State as the responding State.

HISTORY: (Ga.L. 1975, p. 818, § 2.)

§ 19-11-45. Remedies Cumulative.

The remedies provided in this article are in addition to and not in substitution of any other remedies.

HISTORY: (Ga.L. 1958, p. 34, § 3.)

Cases

Any order of support issued by court of this State, entered in action filed under this article, shall not supersede any previous order of support issued in divorce or separate maintenance action, and the latter order will not constitute a modification of the former order; thus, amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. Ray v. Ray, 277 S.E.2d 495 (Ga., 1981); Bisno v. Biloon, 291 S.E.2d 66 (Ga.App., 1982), overruled on other grounds, State v. McKenna, 315 S.E.2d 885 (Ga.App., 1984).

Where mother had previously obtained a contempt order which required father to comply with the original divorce decree, trial court erroneously denied a petition for an order of support under this Act because a complaining spouse is not required to make an election of remedies but may pursue any number of remedies until judgment is satisfied. State v. Overstreet, 318 S.E.2d 65 (Ga.App., 1984).

Cited in State v. McKenna, 315 S.E.2d 885 (Ga., 1984).

§ 19-11-46. Liability of Obligor in State Not Dependent on Obligee's Presence.

Duties of support arising under the law of this State, when applicable under Code § 19.11.49, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (Ga.L. 1958, p. 34, § 4.)

Cases

Any order of support issued by court of this State, entered in action filed under this article, shall not supersede any previous order of support issued in divorce or separate maintenance action, and the latter order will not constitute a modification of the former order; thus, amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. Ray v. Ray, 277 S.E.2d 495 (Ga., 1981); Bisno v. Biloon, 291 S.E.2d 66 (Ga., 1982), overruled on other grounds, State v. McKenna, 315 S.E.2d 885 (Ga.App., 1984).

§ 19-11-47. Support Proceedings When Obligor and Obligee Are Found in Different Counties of State.

A proceeding to compel support under this article may be maintained where both the obligee and the obligor are residents of or are domiciled or found in different counties of this State. Whenever a proceeding under this article is so used, what has been written in other parts of this article as "initiating State" shall be read as if written "initiating county" and what has been written as "responding State" shall be read as if written "responding county."

HISTORY: (Ga.L. 1958, p. 34, § 4A.)

Cases

Any order of support issued by court of this State, entered in action filed under this article, shall not supersede any previous order of support issued in divorce or separate maintenance action, and the latter order will not constitute a modification of the former order; thus, amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. Ray v. Ray, 277 S.E.2d 495 (Ga., 1981); Bisno v. Biloon, 291 S.E.2d 66 (Ga.App., 1982), overruled on other grounds, State v. McKenna, 315 S.E.2d 885 (Ga.App., 1984).

§ 19-11-48. When Extradition of Obligor Authorized; How Extradition Avoided, Petition; Temporary Order of Support; Delivery of Copies of Order; Suspension of Extradition Proceedings.

(a) The Governor of this State may:

(1) Demand from the Governor of any other State the surrender of any person found in the other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) Surrender, on demand by the Governor of any other State, any person found in this State who is charged in the other State with the crime of failing to provide for the support of any person in the other State; and

(b) The provisions for extradition of criminals not inconsistent with this Code section shall apply to any such demand, even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this Code section need state or show that the person whose surrender is demanded has fled from justice or that at the time of the commission of the crime he was in the demanding or other State.

(c) When the extradition of an obligor in this State has been demanded by the Governor of any other State, the obligor may be relieved of extradition to the other State if he submits himself to the jurisdiction of the superior court of this State in the county where he is found and complies with the court's order of support.

(d) In order to submit himself to the jurisdiction of the superior court of this State, the obligor shall file with the court a verified petition containing the following information.

(1) His name and permanent address;

(2) The names, addresses, and ages of his obligees in the demanding State;

(3) His financial circumstances;

(4) That he is willing to submit himself to the jurisdiction of the court of this State and to comply with its order of support; and

(5) Such other information as he believes to be pertinent and material.

(e) The court shall make a temporary order of support and shall continue the matter pending the receipt of such further information as the court may deem necessary or advisable. Two certified copies of the temporary order of support shall be delivered to the office of the Governor and one plain copy shall be delivered to the District Attorney. Upon receipt of the certified copies of the order of support, the Governor may, in his discretion, suspend extradition proceedings so long as the obligor complies with the temporary order of support and with any other orders of support which may thereafter be entered.

HISTORY: (Ga.L. 1958, p. 34, § 5.)

Cases

This section is applicable in criminal extradition proceedings for the crime of nonsupport. In re Pace, 250 Ga. 276, 297 S.E.2d 255 (1982).

§ 19-11-49. Choice of Law for Determining Duties of Support.

Duties of support applicable under this article are those imposed or imposable under the laws of any State in which the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Ga.L. 1958, p. 34, § 6.)

Cases

Cited in Bisno v. Biloon, 291 S.E.2d 66 (Ga.App., 1982); Earley v. Earley, 30 S.E.2d 814 (Ga.App., 1983).

§ 19-11-50. Remedies of State or Political Subdivision Furnishing Support; Court Order for Present or Future Support Not To Be Jeopardized.

(a) Except as otherwise specified in subsection (b) of this Code section, whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished to invoke this article for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

(b) Subsection (a) of this Code section shall not be invoked unless the court having jurisdiction of the matter is satisfied that efforts on the part of the State or political subdivision to secure reimbursements for previous support shall not jeopardize the enforcement of the court's orders for present or future support of the dependent or dependents involved. The court shall have the right at any time to enter appropriate orders to carry out this subsection.

HISTORY: (Ga.L. 1958, p. 34, § 7.)

Cases

Statute requiring furnishing of support for dependent children to custodian is restricted to the person having lawful and not merely physical custody of children, either by decree of court or by valid consent of the obligor parent. Hethcox v. Hethcox, 146 Ga.App. 430, 246 S.E.2d 444 (1978).

§ 19-11-51. Duties Enforceable by Petition; Jurisdiction; Venue.

All duties of support, including the duty to pay arrearages or reimbursement, are enforceable by petition irrespective of relationship between the obligor and obligee.

Jurisdiction of all proceedings hereunder shall be vested in the superior courts of the various counties of this State. The petition must be commenced in the county of residence of the obligee.

HISTORY: (Ga.L. 1958, p. 34, § 8; Ga.L. 1979, p. 941, § 1.)

Cases

A contempt action to collect arrearages which accrued while a child was under 18 may be filed even though the child on whose behalf the action is brought is legally an adult at the time of the action. Johnson v. State, 306 S.E.2d 756 (Ga.App., 1983).

Under this article, a parent who has been awarded custody of child(ren) by a court order is not obligated to pay support to a parent who has violated the court order and taken child(ren) out of courts jurisdiction. Hethcox v. Hethcox, 146 Ga.App. 430, 246 S.E.2d 444 (1978).

The right to a jury trial for alleged nonsupport of minor children domiciled with the other parent in another State is not expressly provided for in this article; nor is the failure to provide this right unconstitutional. Strange v. Strange, 222 Ga. 44, 148 S.E.2d 494 (1966).

Though Ga. Const. 1976, Art. VI, Sec. II, Para. IV reads in part that the Supreme Court "shall be a court alone for the trial and correction of errors of law in all divorce and alimony cases," a petition submitted under this article for the support of minor children does not fall within "a divorce or alimony case" and the statute as a defense is inapplicable. O'Quinn v. O'Quinn, 217 Ga. 431, 122 S.E.2d 925 (1961).

§ 19-11-52. Contents of Petition; When Cause of Action Arises.

The petition shall be verified and shall State the name and, so far as known to the petitioner, the address and circumstances of the respondent and the names of his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent, including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprint, and his Social Security number. However, no cause of action shall arise unless the obligee is in need of support or the obligor has failed and refused to support the obligee.

HISTORY: (Ga.L. 1958, p. 34, § 9.)

§ 19-11-53. Representation of Petitioner by District Attorney; Payment to County for Services; Clerk's Fees.

(a) The District Attorney of each superior court shall be required to represent the petitioner in any proceeding under this article where the petitioner is an applicant or recipient of public assistance or where the obligee is a dependent child or the obligees are dependent children and, in his discretion, may represent the petitioner in any other proceeding under this article where the obligee is the spouse or former spouse of the obligor. The District Attorney shall be authorized to require the completion of an application in accordance with subsection (b) of Code § 19-11-8. The department shall be

entitled to receive monthly reports concerning collections under this provision pursuant to Code § 19-11-21.

(b) For such services there shall be paid to the county in which the petition is handled the sum of $50.00 for each petition handled, whether this State is the initiating or the responding State. In all counties in which the clerk of the superior court is on a fee basis, the District Attorney shall pay from the sum so received by him to the clerk the fees as are allowed by law for the filing of petitions and service of processes filed under this article. However, before the sum shall be paid, an order granting or denying support must have been entered.

HISTORY: (Ga.L. 1958, p. 34, § 10; Ga.L. 1975, p. 781, § 1; Ga.L. 1985, p. 785, § 9.)

Cases

Statute requiring furnishing of support for dependent children to custodian is restricted to the person having lawful and not merely physical custody of children, either by decree of court or by valid consent of the obligor parent. Hethcox v. Hethcox, 146 Ga.App. 430, 246 S.E.2d 444 (1978).

The District Attorney's obligation to represent out of State residents bringing actions under this article to recover support is mandatory. Slaton v. Campbell, 229 Ga. 59, 189 S.E.2d 69 (1972).

§ 19-11-54. By Whom Petition for Minor Obligee Brought; Guardian Ad Litem Not Necessary.

A petition on behalf of a minor obligee may be brought by a person having custody of the minor without appointment as guardian ad litem.

HISTORY: (Ga.L. 1958, p. 34, § 11.)

Cases

Statute requiring furnishing of support for dependent children to custodian is restricted to the person having lawful and not merely physical custody of children, either by decree of court or by valid consent of the obligor parent. Hethcox v. Hethcox, 146 Ga.App. 430, 246 S.E.2d. 444 (1978).

§ 19-11-55. Duty of Court of this State When Acting as Initiating State; Transmittal of Copies of Petition, Certificate, and Article; Monetary Recommendation to Canadian Court.

(a) If a court of this State, acting as an initiating State, finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the respondent or his property, it shall so certify and shall cause three copies of the petition, its certificate, and this article to be transmitted to the court in the responding State. If the name and address of the court are unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be transmitted to the State Information Agency or other proper officials of the responding State, with a request that it or they forward the copies to the proper court and that the

court of the responding State acknowledge their receipt to the court of the initiating State.

(b) If the responding State is a province or territory of the Dominion of Canada, the court of this State shall also set forth in its certificate the weekly or monthly amount in United States money which, in the court's opinion, the respondent should be required to pay for support of the petitioner; but such recommendation is provisional only and is subject to confirmation or modification by the court of the responding State.

HISTORY: (Ga.L. 1958, p. 34, § 12; Ga.L. 1975, p. 818, § 3.)

Cases

Cited in Ray v. Ray, 277 S.E.2d 495 (Ga., 1981).

§ 19-11-56. Payment of Costs and Fees by State; Issuance of Execution To Reimburse State.

A court of this State, whether the State is acting as an initiating or a responding State, may, in its discretion, direct that any part of or all fees and costs incurred in this State, including, without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent, or either, shall be paid by the State and shall direct that the District Attorney's fee be paid by the State. The court may order that when the State has paid the costs above that a fieri facias be issued against the respondent to reimburse the State for its expenditures. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee.

HISTORY: (Ga.L. 1958, p. 34, § 13.)

§ 19-11-57. When Respondent's Arrest Authorized.

(a) When a court of this State, acting as an initiating State, has reason to believe that the respondent may flee the jurisdiction, it may request in its certificate that the court of the responding State obtain the body of the respondent by appropriate process, if that is permissible under the law of the responding State.

(b) When a court of this State, acting as a responding State, has reason to believe that the respondent may flee the jurisdiction, it may obtain the body of the respondent by appropriate process.

HISTORY: (Ga.L. 1958, p. 34, § 14.)

§ 19-11-58. Department of Human Resources Designated State Information Agency; Duties

The Department of Human Resources is designated as the State Information Agency under this article and it shall be its duty:

(1) To compile a list of the courts in this State having jurisdiction under this article and their addresses and to transmit the same to the State Information Agency of every other State which has adopted this article or a substantially similar act;

(2) To maintain a register of such lists received from other States and to transmit copies thereof, as soon as possible after receipt, to every court in this State having jurisdiction under this article;

(3) To approve as to form all orders for payment of the District Attorneys' fees and forward same to the Director of the Fiscal Division of the Department of Administrative Services for payment;

(4) To furnish to the District Attorneys necessary forms, information, and assistance in proceedings under this article.

HISTORY: (Ga.L. 1958, p. 34, § 15; Ga.L. 1975, p. 1141, § 1.)

§ 19-11-59. Payment of District Attorney's Fee.

The fee of the District Attorney arising under this article shall be paid by the Director of the Fiscal Division of the Department of Administrative Services upon receipt of the order for the payment of such fees that has been approved by the State Information Agency. Payment shall be made from funds appropriated for the operation of the superior courts.

HISTORY: (Ga.L. 1958, p. 34, § 15A; Ga.L. 1975, p. 1141, § 2.)

§ 19-11-60. Duty of Court of this State When Acting as Responding State.

When a court of this State, acting as a responding State, receives from the court of an initiating State the copies specified in Code § 19-11-55, it shall:

(1) Docket the case;

(2) Notify the District Attorney;

(3) Set a time and place for a hearing; and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (Ga.L. 1958, p. 34, §16.)

Cases

Court must provide service of petition upon defendant and he must be given notice and hearing in accordance with the laws of this State. Dansby v. Dansby, 222 Ga. 118, 149 S.E.2d 252 (1966).

§ 19-11-61. Procedure in Responding Court When Unable To Obtain Jurisdiction; Cooperation of Police in Locating Respondent; Transfer of Documents Upon Location of Respondent or His Property.

(a) If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the respondent or his property, due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State or information from the District Attorney that the matter should be transferred as provided in subsection (b) of this Code section. The local police authorities and the State police shall cooperate with the court in locating any respondent alleged by petition to be present in this State.

(b) If the respondent or his property is not found in the county and the District Attorney discovers that the respondent or his property may be found in another county of this State or in another State, the District Attorney shall so inform the court. If the District Attorney so informs the court, the clerk of court shall forward the documents received from the court in the initiating State to the superior court in the county of this State or to the appropriate court, information agency, or other proper officials of another State where the defendant or his property may be found. A clerk of court who so forwards documents shall give notice to the court from which the documents were received that the documents have been so forwarded.

HISTORY: (Ga.L. 1958, p. 34, § 17; Ga.L. 1984, p. 387, § 1.)

§ 19-11-62. Discovery Procedures.

In any proceeding under this article the court may order interrogatories or depositions to be taken within or outside the State pursuant to the provisions of law applicable to a court of record.

HISTORY: (Ga.L. 1958, p. 34, § 18.)

§ 19-11-63. Order of Support or Reimbursement.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support and pay arrearages due under any existing court order or to furnish reimbursement for reasonable expenses actually incurred in the absence of a court order and may subject the property of respondent to such order.

HISTORY: (Ga.L. 1958, p. 34, § 19; Ga.L. 1979, p. 941, § 2.)

§ 19-11-64. Transmittal of Copy of Order to Initiating State.

The court of this State, when acting as a responding State, shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (Ga.L. 1958, p. 34, § 20.)

§ 19-11-65. Power of Court To Assure Compliance With Others.

In addition to the other powers specified in this article, the court of this State, when acting as the responding State, has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular has the power:

(1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.

(2) To require the respondent to make payments at specified intervals to the probation department of the court or to the obligee and to report personally to the probation department at such times as may be deemed necessary. Any court hearing a petition which does not have a probation department or bureau shall designate the director of the county or district department of family and children services in the county in which the court sits to act as probation officer for the court under this article; and it shall be the duty of the director or his subordinates so to act.

(3) To punish the respondent who violates any order of the court to the same extent as is provided by law for contempt of the court in any other action or proceeding cognizable by the court.

HISTORY: (Ga.L. 1958, p. 34, § 21.)

Cases

The court's failure to enter findings of fact and conclusions of law with respect to paternity in its order directing payment of child support as required by § 19-11-51(a), is an amendable defect and, therefore, the trial court does not err by denying the defendant's motion to set aside the judgment nor by finding him in contempt for willfully failing to comply with the court's order. Powell v. State, 305 S.E.2d 646 (Ga., 1983).

A contempt action to collect arrearages which accrued while a child was under 18 may be filed even though the child on whose behalf the action is brought is legally an adult at the time of the action. Johnson v. State, 306 S.E.2d 756 (Ga., 1983).

Initiating courts are not bound or obligated to cooperate with Georgia courts beyond the substantially similar terms of the reciprocal law and cannot be compelled to do so. Thibadeau v. Thibadeau, 133 Ga.App. 154, 210 S.E.2d 340 (1974).

§ 19-11-66. Determination of Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or if the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate, by a jury trial if demanded by either party, the paternity issue. Otherwise the court may continue the hearing until the paternity issue has been adjudicated.

HISTORY: (Ga.L. 1977, p. 699, § 1.)

Cases

Cited in Stinson v. Iowa Dept. of Social Services., 323 S.E.2d 917 (Ga.App., 1984).

"Frivolous" in this section is defined as a defense that realistically has a very slight chance of ultimate success. Glover v. Clark, 161 Ga.App. 552, 288 S.E.2d 887 (1982).

The subject of perventage (legitimacy of the child) is a matter to submit for decision during divorce proceedings and is res judicata at time of URESA proceeding. East v. Pike, 163 Ga.App. 720, 294 S.E.2d 597 (1982).

§ 19-11-67. Transmittal of Payments to Court of Initiating State; Certified Statement of Payments Made by Respondent.

A court of this State, when acting as a responding State, shall have the following duties, which may be carried out through the probation department of the court:

(1) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (Ga.L. 1958, p. 34, § 22.)

Cases

Initiating courts are not bound or obligated to cooperate with Georgia courts beyond the substantially similar terms of the reciprocal law and cannot be compelled to do so. Thibadeau v. Thibadeau, 133 Ga.App. 154, 210 S.E.2d 340 (1974).

§ 19-11-68. Duty of Court of Initiating State To Disburse Payments Received.

A court of this State, when acting as an initiating State, shall have the duty, which may be carried out through the clerk of the court, to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

HISTORY: (Ga.L. 1958, p. 34, § 23.)

§ 19-11-69. Spouses Competent and Compellable To Testify.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (Ga.L. 1958, p. 34, § 24.)

§ 19-11-70. Rules of Evidence.

In any hearing under this article, the court shall be bound by the same rules of evidence that bind the juvenile courts of this State.

HISTORY: (Ga.L. 1958, p. 34, § 25.)

§ 19-11-71. Previous Support Orders Not Superseded; How Payments Credited.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (Ga.L. 1958, p. 34, § 26.)

Cases

Uniform Reciprocal Enforcement of Support Act order did not supersede divorce decree ordering child support Bisno v. Biloon, 291 S.E.2d 66 (Ga.App., 1982), overruled on other grounds, State v. McKenna, 315 S.E.2d 885 (Ga.App., 1984).

Under the Uniform Reciprocal Enforcement of Support Act, the court having jurisdiction in the responding State makes an independent determination of a "fair and reasonable sum" irrespective of whether there is a prior decree; and if a different amount is ordered paid, the other judgment is not modified but sums paid under either are credited to the other. State ex rel. McKenna v. McKenna, 315 S.E.2d 885 (Ga.App., 1984), rev'g 312 S.E.2d 380 (Ga.App., 1983).

A Kentucky Uniform Reciprocal Enforcement of Support Act order does not supersede a prior Georgia divorce decree ordering child support; and by the same token, the URESA order does not constitute a modification of the support order. Earley v. Earley, 300 S.E.2d 814 (Ga.App., 1983).

Cited in Francis v. Pittman, 290 S.E.2d 288 (Ga.App., 1982).

An order under this article does not replace or constitute a modification of previously issued support orders. Thus, compliance with a URESA order does not prevent arrearages from accruing under the original order, though all amounts received will be credited to both orders. Ray v. Ray, 247 Ga. 467, 277 S.E.2d 495 (1981); Bisno v. Biloon, 161 Ga.App. 351, 291 S.E.2d 66 (1982).

§ 19-11-72. Jurisdiction in Other Proceedings Not Conferred.

Participation in any proceedings under this article shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (Ga.L. 1958, p. 34, § 27.)

Cases

This section provides a nonresident petitioner immunity from the jurisdiction of the responding State's courts if the Uniform Reciprocal Enforcement of Support Act procedures have been invoked for its legitimate ends--the enforcement of the duties of support. Earley v. Earley, 300 S.E.2d 814 (Ga.App., 1983).

This section precludes counterclaims based merely on the theory that the plaintiff, by initiating the procedure on behalf of the named defendants, has submitted to the jurisdiction of the court of the responding State for other purposes. Id.

This section provides immunity from jurisdiction to the petitioner only if URESA procedures have been invoked for enforcement of duties of support. It is not a blanket protection from a jurisdictional claim by respondent's State court or from alleged torts resulting from URESA claims. Balasco v. County of San Diego, 140 Ga.App. 482, 231 S.E.2d 485 (1976).

Provisions of this article may only be used to compel respondents compliance to the terms of a valid court order. Id.

If an action constitutes a tort upon resident respondent, it does not constitute a "proceeding" within this section. When this occurs, it is the law of the State where alleged wrong has occurred which will have jurisdiction in determining whether a cause of action exists. Balasco v. County of San Diego, 140 Ga.App. 482, 231 S.E.2d 485 (1976).

This article precludes counterclaims based on the allegation that the plaintiff has submitted herself to jurisdiction of the court generally by initiating a proceeding under this act. Thibadeau v. Thibadeau, 133 Ga.App. 154, 210 S.E.2d 340 (1974).

§ 19-11-73. Construction of Article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (Ga.L. 1958, p. 34, § 31.)

§ 19-11-74. Temporary Order.

At any time after the filing of a petition for support and before final hearing, the court may, on satisfactory affidavits or other proof, order a temporary allowance pending a hearing on the merits of the petition.

HISTORY: (Ga.L. 1958, p. 34, § 32.)

§ 19-11-75. Right of Appeal; Effect of Appeal on Order of Support.

Any respondent in an action brought under this article shall have the right of appeal as in civil actions. Any order for support made by the court shall not be affected by an appeal but shall continue in effect until the appeal is decided and thereafter, if the appeal is denied, until changed by further order of the court.

HISTORY: (Ga.L. 1958, p. 34, § 33.)

§ 19-11-76. Additional Remedies on Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Code §§ 19-11-77 through 19-11-81.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

§ 19-11-77. Registration of Foreign Support Order; Filing in Registry of Foreign Support Orders.

(a) The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this article.

(b) The clerk of the superior court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

§ 19-11-78. Application of Code § 19-11-53.

Code § 19-11-53 shall apply equally when this State is acting either as a rendering or registering State.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

§ 19-11-79. Registration Procedure--Transmittal of Documents to District Attorney; Filing; Notice; Docketing.

(a) An obligee seeking to register a foreign support order in a superior court of this State shall transmit to the District Attorney:

(1) Three certified copies of the order with all modifications thereof.

(2) One copy of the Uniform Reciprocal Enforcement of Support Act of the State in which the order was made;

(3) One copy of the law governing certification of orders in the State in which the order is being certified; and

(4) A statement, verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

(b) Upon receipt of the documents specified in subsection (a) of this Code section, the District Attorney shall file them with the clerk of the superior court, for the purpose of setting a hearing thereon.

(c) Within ten days after the filing, the clerk shall send, by certified of registered mail with return receipt requested, to the obligor at the address given, a notice of the

filing with a copy of the support order and a copy of the rule nisi setting the matter down for hearing. He shall also docket the case for hearing and notify the District Attorney.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

§ 19-11-80. Same--Hearing; Defenses; Grounds for Stay; Entry of Order as Registration; County's Entitlement to Fee; Through Whom Payments Made.

(a) At the hearing, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal is expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

(b) If the obligor asserts no defenses or the court finds the obligors defenses meritless, the court shall proceed to enter an order making the foreign support order an order of the courts of this State. The entry of such an order constitutes registration under this article.

(c) The registration of a foreign support order of an order denying registration or of an order in an action brought to enforce a registered foreign support order shall constitute an order granting or denying support for the purposes of entitling the county in which a proceeding is brought under Code §§ 19-11-76 through 19-11-81 to the $50.00 fee as provided in Code § 19-11-53.

(d) The court shall be empowered to order payment under the terms of the registered order through the clerk of the superior court, the probation department, the child support receiver, or such other collection agency as the court shall designate.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

§ 19-11-81. Effect of Registration of Foreign Support Order.

Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for modifying, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

HISTORY: (Ga.L. 1979, p. 938, § 1.)

GUAM
GUAM CODE CIV. PROC. §§ 1500 to 1531

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GUAM

GUAM CODE CIV. PROC. §§ 1500 to 1531

Chapter I: General Provisions

§ 1500. Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1501. Definitions.

As used in this Act unless the context requires otherwise:

(a) "STATE" includes any State, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(b) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "COURT" means the Island court of Guam and when the context requires, means the court of any State as defined in a substantially similar reciprocal law.

(e) "LAW" includes both common and statute law.

(f) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise.

(g) "OBLIGOR" means any person owing a duty of support.

(h) "OBLIGEE" means any person to whom a duty of support is owed in the Territory of Guam.

(i) "GOVERNOR" includes any person performing the functions of the office of Governor or exercising executive authority within the Territory of Guam.

(j) "SUPPORT ORDER" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission, regardless of the kind of action in which it is entered.

(k) "CERTIFICATION" shall be in accordance with the law of the certifying State.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-24, eff. March 17, 1959.)

§ 1502. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1503. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 1506, bind the obligor, present in this State, regardless of the presence of residence of the obligee.

HISTORY: (Ch. I, consisting of §§ 1500 through 1503 added by P.L. 2-82, eff. July 8, 1954.)

Chapter II: Criminal Enforcement.

§ 1504. Interstate Rendition.

The Governor of this State (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State. The provisions for extradition of criminals, not inconsistent herewith, shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1505. Condition of Interstate Rendition.

(a) Before making the demand on the Governor of any State for the surrender of a person charged in this territory with the crime of failing to provide for the support of any person, the Governor of this territory may require the Island attorney to satisfy him that at least sixty (60) days prior thereto, the obligee brought an action for the support under this Act, or that the bringing of such action would be of no avail.

(b) When under this or a substantially similar act, a demand is made upon the Governor of this territory by the Governor of any State for the surrender of a person charged in any State with the crime of failing to provide support, the Governor may call upon the Island attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this Act or whether the bringing of such action would be effective.

(c) If an action for support would be eff. and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit the prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-24, eff. March 17, 1959.)

Chapter III: Civil Enforcement.

§ 1506. Choice of Law.

Duties of support applicable under this law are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1507. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnished support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1508. How Duties of Support Are Enforced.

All duties of support, including arrearages, are enforceable by complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the Island court.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-25, eff. March 17, 1959.)

§ 1509. Contents of Complaint for Support.

The complaint shall be verified and shall state the name and , so far as known to the complainant, the addresses and circumstances of the defendant, his dependants for whom support is sought and all other pertinent information. The complainant may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and

aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1510. Officials To Represent Complainant.

The Island attorney, upon the request of the court, shall represent the complainant in any proceeding under this Act.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1511. Petition for a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1512. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the complaint (2) its certificate and (3) this act to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1513. Costs and Fees.

The Island court acting either as an initiating or responding State may in its discretion, declare all or any part of the fees and costs shall be waived or direct that any part of or all fees and costs incurred in the territory including, without limitation by enumeration, fee for filing, service of process, seizure of property, and stenographic service of both complainant and defendant, or either, shall be paid by the obligor.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-24, eff. March 17, 1959.)

§ 1514. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may:

(a) As an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(b) As a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1515. State Information Agency.

The Attorney General is hereby designated as the State Information Agency under this law, and it shall be his duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar act.

(2) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this Act.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1516. Duty of the Court and Officials as the Responding State.

(a) When the Island court acting as a responding State has received from the court of an initiating State the aforesaid copies, the clerk of the court shall docket the case and notify the Island attorney of his action.

(b) The Island attorney shall take all actions necessary in accordance with the laws of the territory to give the court jurisdiction of the defendant or of his property, and shall request the clerk of the court to set a time and place for the hearing.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-24, eff. March 15, 1959.)

§ 1517. Further Duties of Court and Officials in the Responding State.

(a) The Island attorney shall on his own initiative use all means at his disposal to trace the defendant or his property an if, due to inaccuracies of the complainant or otherwise, the court cannot obtain jurisdiction, the Island attorney shall request the court to continue the case pending the receipt of more accurate information or an amended complaint from the court in the initiating State.

(b) If the defendant or his property is not found within the territory and the Island attorney discovers that the defendant or his property may be found in any State he shall so inform the court and thereupon the clerk of the court shall forward the documents from the Island court to a court in such State or to the information agency or other proper official of such State with a request that it forward the documents to the proper court. Upon the receipt by the Island court of documents from any State which is not the initiating State, the Island court and the Island attorney shall have the same powers and

duties under this Act as if the documents had been originally addressed to them. When the clerk of the Island court retransmits documents to a court in another State, he shall notify forthwith the court from which the documents came.

(c) If the Island attorney has no information as to the whereabouts of the obligor or his property, he shall so inform the initiating court.

HISTORY: (P.L. 2-82, eff. July 8, 1954; am.P.L. 5-24, eff. March 17, 1959.)

§ 1518. Procedure.

In any proceeding under this law, the court may order interrogatories or depositions to be taken within or without the State, pursuant to the provisions of law applicable to a court of record.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1519. Hearing and Determination.

If the complainant is absent from the responding State and the defendant presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (P.L. 5-24, eff. March 17, 1959.)

§ 1520. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife and are inapplicable to proceedings under this Act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1521. Rules of Evidence.

In any hearing under this law, the court shall not be bound by the same rules of evidence that bind said court in dealing with other cases that come regularly before it.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1522. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1523. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1524. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1525. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(b) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1526. Proceedings Not To Be Stayed.

No proceeding under this Act shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution, habeas corpus or custody proceedings.

HISTORY: (P.L. 5-24, eff. March 17, 1959.)

§ 1527. Additional Duty of the Court of this State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1528. Application of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1529. Effect of Participation in Proceeding.

Participation in any proceedings under this Act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1530. Severability.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

HISTORY: (P.L. 2-82, eff. July 8, 1954.)

§ 1531. Short Title.

This Title may be cited as the "Uniform Reciprocal Enforcement of Support Act."

HISTORY: (P.L. 5-24, eff. March 17, 1959.

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Part I: General Provisions

§ 576-1. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "STATE" includes any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means any circuit court of this State and when the context requires, means the court of any State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "OBLIGEE" means any person to whom a duty of support is owed or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(9) "REGISTER" means to file in the Registry of Foreign Support Orders.

(10) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

HISTORY: (L. 1951, ch. 216, § 1; am.L. 1953, ch. 192, § 2; R.L. 1955, § 329.2; H.R.S. § 576-1; am.L. 1982, ch. 70, § 1.)

§ 576-2. Remedies Additional to Those Now Existing.

The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1951, ch. 216, § 3; am.L. 1953, ch. 192, § 3; R.L. 1955, § 329.3.)

§ 576-3. Extent of Duties of Support.

Duties of support arising under the law of this State when applicable under § 576-1, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (L. 1951, ch. 216, § 4; am.L. 1953, ch. 192, § 4; R.L. 1955, § 329.4.)

§ 576-4. Intercounty Application.

This chapter shall be applicable when both the plaintiff and the defendant are in this State but in different counties. If the court of the county in which the complaint is filed finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that a court of another county in this State may obtain jurisdiction of the defendant or his property, the clerk of the court shall send three copies of the complaint and a certification of the findings to the court of the county in which the defendant or his property is found. The clerk of the court of the county receiving these copies shall notify the county attorney or corporation counsel of their receipt. The county attorney or corporation counsel and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the State as a responding State. § 576-27 requiring three certified copies of this chapter to be transmitted by the sending State to the responding State shall not apply when the provisions of this chapter are used by or between the counties of this State.

HISTORY: (L. 1961, ch. 70, § 1; Supp. § 329.5.)

Part II: Criminal Enforcement

§ 576-11. Interstate Rendition.

The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such State who is charged in this State with the crime of failing to provide for the support of any person in this State and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such State with the crime of failing to provide for the support of a person in such State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any

proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (L. 1951, ch. 216, § 5; am.L. 1953, ch. 192, § 5; R.L. 1955, § 329.10.)

§ 576-12. Relief from the Above Provisions.

Any obligor contemplated by § 576-11, who submits to the jurisdiction of the court of such State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

HISTORY: (L. 1951, ch. 216, § 6; am.L. 1953, ch. 192, § 6; R.L. 1955, § 329.11.)

Part III: Civil Enforcement

§ 576-21. Choice of Law.

Duties of support applicable under this law are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1951, ch. 216, § 7; am.L. 1953, ch. 192, § 7; R.L. 1955, § 329.20.)

§ 576-22. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke this chapter as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (L. 1951, ch. 216, § 8; am.L. 1953, ch. 192, § 8; R.L. 1955, § 329.21.)

§ 576-23. How Duties of Support Are Enforced; Immunities Unavailable, Jurisdiction.

All duties of support, including the duty to pay arrearages, are enforceable by action commenced by complaint irrespective of relationship between the obligor and obligee. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available. Jurisdiction of all proceedings hereunder shall be vested in the family court of the circuit in which the plaintiff has resided for sixty days next proceeding his or her complaint.

HISTORY: (L. 1951, ch. 216, § 9; am.L. 1953, ch. 192, § 9; R.L. 1955, § 329.22; am.imp.L. 1965, ch. 232, § 1, H.R.S. § 576-23; am.L. 1982, ch. 70, § 2.)

§ 576-24. Contents of Complaint for Support.

(a) The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the addresses and circumstances of the defendant, his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks, other names and aliases by which the defendant has been or is known, the name of the defendant's employer, the defendant's fingerprints or Social Security number.

(b) The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, judicial separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1951, ch. 216, § 10; am.L. 1953, ch. 92, § 10; R.L. 1955, § 329.23; H.R.S. § 576-24; am.L. 1982, ch. 70, § 3.)

§ 576-25. Officials To Represent Plaintiff.

Where in any case initiated in a court of this State the plaintiff is unable to hire private counsel, the county attorney or corporation counsel upon request of the Department of Social Services and housing shall represent the plaintiff, except that fees may be charged as provided for by the provisions of chapter 346; the county attorney or corporation counsel of each county shall represent the plaintiff in any case in which the State is the responding State, provided that in the latter case the plaintiff may employ private counsel and in such event the county attorney or corporation counsel shall not be obligated to act save as requested by the court.

HISTORY: (L. 1953, ch. 192, § 11; R.L. 1955, § 29-24; am.L. Sp. 1959 2d, ch. 1, § 20; H.R.S. § 576-25; am.L. 1970, ch. 105, § 5; am.L. 1984, ch. 230, § 3.)

§ 576-26. Petition for a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1953, ch. 192, § 12; R.L. 1955, § 329.25.)

§ 576-27. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate, and (3) this chapter to be transmitted to the court in the responding State. If the name and address of the court is unknown and the responding State has an information

agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (L. 1953, ch. 192, § 13; R.L. 1955, § 329.26.)

§ 576-28. Costs and Fees.

A court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant or either, shall be advanced by the county and taxed against the defendant and thereupon the county reimbursed therefor. Where the action is brought by or through the State or any county or an agency thereof, there shall be no filing fee.

HISTORY: (L. 1953, ch. 192, § 14; R.L. 1955, § 329.27.)

§ 576-29. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may:

(1) As an initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (L. 1953, ch. 192, § 15; R.L. 1955, § 329.28.)

§ 576-30. State Information Agency.

The Department of Social Services and housing is designated as the State Information Agency under this chapter, and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the State Information Agency of every State which has adopted this or a substantially similar act;

(2) Maintain a register of such lists received from the States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

HISTORY: (L. 1953, ch. 192, § 16; R.L. 1955, § 329.29; am.L. 1957, ch. 31, § 1; H.R.S. § 576-30; am.L. 1979, ch. 12, § 1.)

§ 576-31. Duty of the Court of this State as Responding State.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall:

(1) Docket the case,

(2) Notify the county attorney or corporation counsel if plaintiff is not represented by private counsel,

(3) Set a time and place for a hearing, and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (L. 1953, ch. 192, § 17; R.L. 1955, § 329.30.)

§ 576-32. Further Duty of Responding Court.

If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property due to the inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating State.

HISTORY: (L. 1953, ch. 192, § 18; R.L. 1955, § 329.31.)

§ 576-33. Procedure.

The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of support claimed.

HISTORY: (L. 1953, ch. 192, § 19; R.L. 1955, § 329.32.)

§ 576-34. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject to the property of the defendant to such order, and it may enforce the order to the same extent as is provided by law in any other suit or proceeding cognizable by the court.

§ 576-35. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (L. 1953, ch. 192, § 21; R.L. 1955, § 329.34.)

§ 576-35.3. Registration of Foreign Support Orders.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided as follows:

(1) The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes therein provided.

(2) The clerk of the court shall maintain a registry of foreign support orders in which foreign support orders shall be filed.

(3) If this State is acting either as a rendering or a registering State, the county attorney or corporation counsel shall represent the obligee in proceedings under this part. If such attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

§ 576-35.5. Registration Procedure for Foreign Support Orders; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof,

(2) One copy of the Reciprocal Enforcement of Support Act of the State in which the order was made, and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. The clerk shall also docket the case and notify the county attorney or corporation counsel of such action. The county attorney or corporation counsel shall proceed diligently to enforce the order.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

§ 576-35.7. Effect of Registration of Foreign Support Orders; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty days after the mailing of the notice of the registration in which to petition the court to vacate the registration or to provide for other relief. If the obligor does not so petition, the registered support order is confirmed. Upon the expiration of the notification period, the court may enforce the order and collection of arrears to the same extent as provided in § 571.52.

HISTORY: (Am.L. 1985, ch. 175, § 2.)

(c) At the hearing to enforce the registered support the obligor may present only matters that would be available as defenses in an action to enforce a foreign money judgment. If it is shown to the court that an appeal from the order is pending, or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support order as required by the rendering State. If the obligor shows the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period, if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

§ 576-36. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(2) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to the clerk at such times as may be deemed necessary.

(3) To punish the defendant who violates any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (L. 1953, ch. 192, § 22; R.L. 1955, § 329.35.)

§ 576-37. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(2) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (L. 1953, ch. 192, § 23; R.L. 1955, § 329.36.)

§ 576-38. Additional Duty of the Court of this State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (L. 1953, ch. 192, § 24; R.L. 1955, § 329.37.)

§ 576-39. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1953, ch. 192, § 25; R.L. 1955, § 329.38.)

§ 576-39.3. Rules of Evidence.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil action in the family court. If the action is based on a support order issued by another court a certified copy of the order may be received as evidence of the duty of support. The determination or enforcement of duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

§ 576-39.5. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both the child's alleged father and the child's mother are present at the hearing or the proof required in the case indicates that the presence of either or both of them is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

§ 576-40. Applications of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate

maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (L. 1953, ch. 192, § 26; R.L. 1955, § 329.39.)

§ 576-41. Effect of Participation in Proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (L. 1953, ch. 192, § 27; R.L. 1955, § 329.40.)

§ 576-42. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, judicial separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard the court must take into account in placing its support order the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1982, ch. 70, pt. of § 4.)

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§ 7-1048. Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1969, ch. 130, § 1, p. 397.)

Cases

Cited in Herrett v. Herrett, 670 P.2d 63 (Idaho Ct.App., 1983).

§ 7-1049. Definitions.

(a) "COURT" means the District Courts of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise but not including payment of alimony.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this Act.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed for a minor person unless otherwise emancipated, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(j) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(k) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1969, ch. 130, § 2, p. 397; am. 1977, ch. 97, § 1, p. 194.)

§ 7-1050. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1969, ch. 130, § 3, p. 397.)

§ 7-1051. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 7-1054, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1969, ch. 130, § 4, p. 397.)

§ 7-1052. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1969, ch. 130, § 5, p. 397.)

Cases

Extradition -- indictment not prerequisite.

Idaho law did not require that before an extradition to another State pursuant to the provisions of Uniform Reciprocal Enforcement of Support Act for noncompliance with the order of the court to support minor children, there must have been indictment for the

crime in the requesting State and any such requirement found elsewhere did not control the statute. Derr v. Wilcox, 94 Idaho 321, 487 P.2d 684 (1971).

§ 7-1053. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1969, ch. 130, § 6, p. 397.)

§ 7-1054. Choice of Law.

Duties of support applicable under this Act are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1969, ch. 130, § 7, p. 397.)

§ 7-1055. Remedies of a State or Political Subdivision Thereof Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1969, ch. 130, § 8, p. 397.)

§ 7-1056. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the

parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1969, ch. 130, § 9, p. 397.)

§ 7-1057. Jurisdiction.

Jurisdiction of any proceedings under this Act is vested in the District Courts in the county of residency of either the initiating obligee or the responding obligor.

HISTORY: (1969, ch. 130, § 10, p. 397; am. 1977, ch. 94, § 2, p. 194.)

§ 7-1058. Contents of Complaint for Support; Where Filed.

(a) The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1969, ch. 130, § 11, p. 397.)

§ 7-1059. Officials To Represent the Obligee.

If this State is acting as an initiating State the prosecuting attorney shall represent the obligee in any proceeding under this Act. If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may order him to comply with the request of the court or will undertake the representation.

HISTORY: (1969, ch. 130, § 12, p. 397; am. 1977, ch. 94, § 3, p. 194.)

Cases

Cited in Herrett v. Herrett, 670 P.2d 63 (Idaho Ct.App., 1983).

§ 7-1060. Complaint for a Minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1969, ch. 130, § 13, p. 397.)

§ 7-1061. Duty of Initiating Court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three (3) copies of the complaint and its certificate and one (1) copy of this Act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding court has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1969, ch. 130, § 14, p. 397.)

§ 7-1062. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1969, ch. 130, § 15, p. 397.)

§ 7-1063. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1969, ch. 130, § 16, p. 397.)

§ 7-1064. State Information Agency.

(a) The Commissioner of Public Assistance is designated as the State Information Agency under this Act, and he shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each

session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State Information Agencies.

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests make to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of three (3) copies of the complaint and certificate and one (1) copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the Attorney General who may undertake the representation.

HISTORY: (1969, ch. 130, § 17, p. 397.)

§ 7-1065. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the complaint certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with the law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may order him comply with the request of the court or will undertake the representation.

HISTORY: (1969, ch. 130, § 18, p. 397; am. 1977, ch. 94, § 4, p. 194.)

§ 7-1066. Further Duties of Court and Officials in the Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the

court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall move the court for a change of venue. Thereupon the clerk of the court shall forward the documents received from the court in initiating State to a court in the other county or to a court in the other State or to the Information Agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (1969, ch. 130, § 19, p. 397; am. 1977, ch. 94, § 5, p. 194.)

§ 7-1067. Continuance To Permit Evidence.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense the court shall, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1969, ch. 130, § 20, p. 397.)

§ 7-1068. Obligor Testifying; Immunity from Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (1969, ch. 130, § 21, p. 397.)

§ 7-1069. Marital Privilege Inapplicable.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1969, ch. 130, § 22, p. 397.)

§ 7-1070. Rules of Evidence Applicable; Defenses.

In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the District Court. The determination or enforcement of a duty of support owed to one (1) obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1969, ch. 130, § 23, p. 397; am. 1977, ch. 94, § 6, p. 194.)

§ 7-1071. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. The court and prosecuting attorney or legal counsel for the Department of Health and Welfare of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the prosecuting attorney or legal counsel for the Department of Health and Welfare shall transmit a certified copy of the order and the payment record to the county where it appears that procedures to enforce payment of the amount due would be effective. The clerk and prosecuting attorney or counsel for the Department of Health and Welfare to whom the certified copies of the order and payment record are forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order and to the initiating jurisdiction.

Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding state if the obligee is not receiving child support enforcement services under Title IV-D of the Social Security Act; or to the Department of Health and Welfare if the obligee is receiving child support enforcement services under Title IV-D of the Social Security Act. Upon receipt of a payment made by respondent, the clerk of the court or Department of Health and Welfare shall immediately transmit the same to the initiating jurisdiction.

Any child support order issued or modified under this section after July 1, 1986, shall contain a provision allowing the obligee to enforce the order by income withholding if arrearages at least equal to the support payable for one (1) month accumulate under the order; and shall include the notice required in § 32.1205, Idaho Code, advising the obligor that the obligee can seek enforcement of the order by means of a mandatory income withholding order issued pursuant to this chapter without further notice to the obligor whenever there are arrearages at least equal to the support payment for one (1) month.

Failure to include this provision does not affect the validity of the support order. If the Social Security number of the person obligated to make child support payments under the support order or decree is available, the court shall require that the Social Security number of the obligor be included in the order or decree.

HISTORY: (1969, ch. 130, § 24, p. 397; am. 1977, ch. 94, § 7, p. 194.)

§ 7-1072. Responding State To Transmit Copies to Initiating State.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1969, ch. 130, § 25, p. 397.)

§ 7-1073. Additional Powers of Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1969, ch. 130, § 26, p. 397.)

§ 7-1074. Paternity Issue as Defense.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue, pursuant to ch. 11, title 7, Idaho Code. In the alternative the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1969, ch. 130, § 27, p. 397; am. 1978, ch. 149, § 1, p. 331.)

§ 7-1075. Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1969, ch. 130, § 28, p. 397.)

§ 7-1076. Duties of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (1969, ch. 130, § 29, p. 397.)

§ 7-1077. Proceedings Not To Be Stayed.

A responding court shall not stay the proceedings or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention or jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1969, ch. 130, § 30, p. 397.)

§ 7-1078. Support Orders Not Nullified; Credit for Payments Under Other Order.

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1969, ch. 130, § 31, p. 397.)

Cases

In general.

A support order made in an Idaho court in a Uniform Reciprocal Enforcement of Support Act case does not nullify an existing support order which has been entered in this State. Nomer v. Kossman, 100 Idaho 898, 606 P.2d 1002(1980).

Application of payments.

Payments made by a husband pursuant to a support order issued by a District Court of this State upon the petition of the wife charging delinquency in payments under an order in a court of another State will be applied to the period in which made and not to prior delinquency under the foreign order. Dunn v. Dupre, 91 Idaho 246, 420 P.2d 8 (1966).

Authority of original court.

The authority of the court entering the original amount for support in a divorce decree was not affected by the action taken by a sister State in ordering the payment of a different sum for support. Despain v. Despain, 78 Idaho 185, 300 P.2d 500 (1956).

§ 7-1079. Jurisdiction Over Parties Limited.

Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1969, ch. 130, § 32, p. 397.)

§ 7-1080. Intra- or Intercounty Application.

This Act applies if both the obligee and the obligor are in this State. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify and prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State and said duties shall also apply if both obligee and obligor reside in the same county in this State.

HISTORY: (1969, ch. 130, § 33, p. 397; am. 1977, ch. 94, § 8, p. 194.)

Cases

Proper venue.

Other than in unusual circumstances, where the party required to pay support is found in Idaho, an appropriate proceeding should be brought in the court which entered the original decree. Nomer v. Kossman, 100 Idaho 898, 606 P.2d 1002 (1980).

§ 7-1081. Appeal by Attorney General.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he will:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (1969, ch. 130, § 34, p. 397; am. 1977, ch. 94, § 9, p. 194.)

§§ 7-1082 to 7-1087. Repealed.

§ 7-1088. Construction of Act.

This Act shall be so construed as to effectuate its general purpose to make uniform the laws of those States which enact it.

HISTORY: (1969, ch. 130, § 41, p. 397.)

§ 7-1089. Short Title.

This Act may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act."

HISTORY: (1969, ch. 130, § 42, p. 397.)

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ILL. ANN. STAT. Ch. 40. Par. 1201 to 1242

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ILL. ANN. STAT. Ch. 40. Par. 1201 to 1242

Part I: General Provisions

§ 1201. Short Title and Purpose.

This Act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act. The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

Cases

Construction and application.

Primary purpose of Revised Uniform Reciprocal Enforcement of Support Act (this paragraph and subsequent paragraphs) is to secure support for dependent children from persons legally responsible for their support. Paredes v. Paredes, App.1 Dist. 1983, 73 Ill.Dec. 765, 118 Ill.App.3d 27, 454 N.E.2d 1014.

Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is designed to be a supplementary mechanism directed at enforcing previously entered orders rather than a device for terminating or modifying child support. Coons v. Wilder, 1981, 48 Ill.Dec. 512, 93 Ill.App.3d 127, 416 N.E.2d 785.

Purpose of Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is to secure support for dependent children from persons legally responsible for their support. People ex rel. Oetjen v. Oetjen, 1981, 48 Ill.Dec. 247, 92 Ill.App.3d 699, 416 N.E.2d 278.

Relief from an objectionable divorce order should not be sought through proceeding under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) but through appeal or modification. Id.

Revised Uniform Reciprocal Enforcement of Support Act, as uniform act (par. 1201 et seq. of this chapter), is to be so construed as to effectuate its general purpose to make uniform the law of those States which enact it. Id.

Fact that Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) permitted State which had furnished public assistance to former wife to stand in former wife's place to secure reimbursement and obtain further support did not enlarge expressed purpose of Act beyond enforcement of existing obligations. Id.

Purposes of Uniform Reciprocal Enforcement of Support Act (this paragraph and subsequent paragraphs) are to improve and extend by reciprocal legislation the enforcement of duties of support and to enable a dependent in one State to enforce a duty of support owed by a person residing in another State. People ex rel. Noah v. Gasik, 1980, 47 Ill.Dec. 447, 91 Ill.App.3d 980, 415 N.E.2d 452.

Uniform Reciprocal Enforcement of Support Act (this paragraph and subsequent paragraphs) is intended as a supplementary device to enforce support orders previously entered and is not designed to serve as an independent basis for imposition or termination of support orders. Id.

Proceeding under Uniform Reciprocal Enforcement of Support Act (this paragraph and subsequent paragraphs) is a separate, independent action to enforce support obligations, and the remedies provided under the Act are in addition to and not in substitution for any other remedies. Id.

Decisions in other States.

Purpose of the Uniform Reciprocal Enforcement of Support Act (this paragraph and subsequent paragraphs) is to facilitate the enforcement of support payments for dependent children by providing for collection across State lines and, to that extent, is designed to enforce previously entered orders, not to modify or terminate them. Cahn v. Cahn, N.Y.City Civ.Ct. 1982, 117 Misc.2d 1054, 459 N.Y.S.2d 657.

§ 1202. Definitions.

(a) "COURT" means the circuit court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or impossible by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for dissolution of marriage, legal separation, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this Act.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to record in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (P.A. 76-1090, § 2, eff. Aug. 28, 1969; am.P.A. 81-230, § 9, eff. Aug. 28, 1979.)

Cases

Juror who had case pending in building court of circuit court was properly excused by trial court pursuant to ch. 78, par. 14 providing that it shall be sufficient cause for challenge of petit juror that he is party to suit pending for trial in that court. People v. Baker, 469 N.E.2d 602 (Ill.App.1 Dist., 1984).

§ 1203. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (P.A. 76-1090, § 3, eff. Aug. 28, 1969.)

Cases

In wife's action under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) seeking to compel former husband to pay child support, trial court abused discretion when it conditioned release of child support payments on discontinuation of former wife's alleged interference with former husband's visitation rights, since that issue was not before court. Rathmell v. Gardner, 434 N.E.2d 1156 (Ill., 1982).

Proceeding under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is separate, independent action to enforce support obligations, and remedies provided under Act are in addition to and not in substitution for any other remedies. People ex rel. Oetjen v. Oetjen, 416 N.E.2d 278 (Ill., 1981).

Once a child support obligation has been abated by a postjudgment order in divorce action, there remains no duty of support which may be enforced through remedies available under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). Id.

Proceeding under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is a separate, independent action to enforce support obligations, and the remedies provided under the Act are in addition to and not in substitution for any other remedies. People ex rel. Noah v. Gasik, 415 N.E.2d 452 (Ill., 1980).

Court did not abuse discretion in refusing to transfer action by wife for child support under Revised Uniform Reciprocal Enforcement of Support Act from county department of circuit court to divorce department of court, where divorce action between divorced parties was pending. Nelson v. Nelson, 1974, 17 Ill.App.3d 651, 308 N.E.2d 132.

§ 1204. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 7, (par. 1207 of this chapter) bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (P.A. 76-1090, § 4, eff. Aug. 28, 1969.)

Cases

In general.

Under the Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter), child support arrearages, which accrued during child's minority constitute vested rights which may be enforced even after child reaches majority. People ex. rel. Valle v. Valle, 447 N.E.2d 945 (Ill., 1983).

Construction and application.

Allegations of petitioner mother that she alone supported parties' daughters and that she was entitled to reimbursement to extent that she satisfied respondent father's obligation were sufficient to establish petitioner's standing to bring petition seeking registration and enforcement of New York child support order under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). Ball v. Haughton, 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 562, 377 N.E.2d 78.

Parents are under continuing legal duty to support their minor children until they reach their majority. Graham v. Graham, 1976, 3 Ill.Dec. 141, 44 Ill.App.3d 519, 358 N.E.2d 308.

Where husband did not seek custody or visitation rights as to minor children and record did not show that his rights as to children had in any respect been thwarted by wife, order in favor of wife for child support was enforceable under Revised Uniform Reciprocal Enforcement of Support Act despite fact that wife had absented herself from jurisdiction and failed to appear in divorce action instituted by husband. Nelson v. Nelson, 1974, 17 Ill.App.3d 651, 308 N.E.2d 132.

Adjudication of paternity cannot be had under Uniform Reciprocal Enforcement of Support Act without confrontation between the parties. 1971 Op.Atty.Gen. No.S-318.

There is duty of wife to support husband under Support Act (par. 52 of ch. 68, repealed) only if actual dependency of husband on wife is shown. First Natl. Bank and Trust Co. of Rockford v. Sandifer, 1970, 121 Ill.App.2d 479, 258 N.E.2d 35.

Part II: Criminal Enforcement

§ 1205. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (P.A. 76-1090, § 5, eff. Aug. 28, 1969.)

§ 1206. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar Act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

Part III: Civil Enforcement

§ 1207. Choice of Law.

Duties of support applicable under this act are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (P.A. 76-1090, § 7, eff. Aug. 28, 1969.)

Cases

Had trial court been cognizant of Cardenas v. Cardenas holding that a bigamous marriage which is void does not relieve husband of his duty to support children of the

marriage, it may have been inclined to impose a duty of support on the defendant, whose first marriage allegedly had not been dissolved, or to at least have subjected the defendant to the presumption of paternity; thus, plaintiff had sufficient grounds for requesting a rehearing of her action for support due to misapprehension of the law and her motion was sufficient to toll the period for the filing of her notice of appeal. People ex rel. Valle v. Valle, 447 N.E.2d 945 (Ill., 1983).

Duties of support under Uniform Reciprocal Enforcement of Support Act are those imposed under laws of any State where obligor was present for period during which support is sought, and obligor is presumed to have been present in responding State during period for which support is sought until otherwise shown. Dorsey v. Dorsey, 408 N.E.2d 502 (Ill., 1980).

§ 1208. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (P.A. 76-1090, § 8, eff. Aug. 28, 1969.)

Cases

Affirmative defenses which were raised by Illinois respondent in petition under Revised Uniform Reciprocal Enforcement of Support Act for reimbursement of public assistance paid by State of Utah for support of minor children and which alleged mother's fraud and ineligibility to receive public assistance were properly stricken as being immaterial or collateral in that petition sought recovery of public assistance paid parties' children and did not involve public assistance paid for benefit of mother. Paredes v. Paredes, 454 N.E.2d 1014 (Ill.App.1 Dist., 1983).

Proceeding instituted under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) for reimbursement of public assistance paid by State of Utah for support of minor children was a separate, independent action to enforce support obligations and, being in addition to and not in substitution for any other remedies, was not a proceeding in which Illinois respondent could counterclaim for divorce or raise issues concerning child custody or visitation privileges or other matters commonly determined in domestic relations cases. Id.

Reimbursement of public assistance paid by State of Utah for support of minor children was warranted in proceeding under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) if it could be shown that Illinois respondent had an imposed or imposable duty to support his minor children, the State of Utah had furnished support to those children, and that alleged amounts were due and unpaid by Illinois respondent. Id.

For State which had furnished public assistance to former wife to have remedy under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter), there had to be an imposed or imposable duty of support, and, where former husband's duty of support had been abated, State had no right to collect support which former husband had no obligation to pay. People ex rel. Oetjen v. Oetjen, 416 N.E.2d 278 (Ill., 1981).

Fact that Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) permitted State which had furnished public assistance to former wife to stand in former wife's place to secure reimbursement and obtain further support did not enlarge expressed purpose of Act beyond enforcement of existing obligations. Id.

§ 1209. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (P.A. 76-1090, § 9, eff. Aug. 28, 1969.)

Cases

After court has entered order of support under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter), parent may not unilaterally terminate payment of support; all duties of support, including duty to pay arrearages, are enforceable by proceeding under the Act including proceeding for civil contempt. People ex rel. Argo v. Henderson, 422 N.E.2d 1005 (Ill., 1981).

Past-due installments of child support constitute a vested right which is enforceable under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). People ex rel. Oetjen v. Oetjen, 416 N.E.2d 278 (Ill., 1981).

Even after child reaches majority, custodian does not lose right to recover arrearages which accrued at time of child's minority. Dorsey v. Dorsey, 408 N.E.2d 502 (Ill., 1980).

Child support arrearages constitute vested right under Illinois law and are specifically enforceable under Uniform Reciprocal Enforcement of Support Act. Id.

Contempt proceeding was not a proper means to enforce payment of accrued child support to divorced wife where the children had reached their majority. Fox v. Fox. 1978, 14 Ill.Dec. 201, 56 Ill.App.3d 446, 371 N.E.2d 1254.

Right to receive past due child support payments, which are required under a divorce decree, are vested rights; custodian of children does not lose the right to collect the arrearage in support after children reach majority. Id.

Failure to pay child support is prima facie evidence of contempt; failure to pay, however, must be willful, and defendant should be allowed to show that he has defense. People ex rel. Person v. Miller, 1977, 13 Ill.Dec. 920, 56 Ill.App.3d 450, 371 N.E.2d 1012.

Test for existence of defense in contempt action brought against defendant who has failed to pay child support is whether defendant has satisfactorily established that his failure was due entirely to his inability to pay. Id.

§ 1210. Jurisdiction.

Jurisdiction of any proceeding under this Act is vested in the circuit court.

HISTORY: (P.A. 76-1090, § 10, eff. Aug. 28, 1969.)

Cases

In wife's action under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) seeking to compel former husband to pay child support, trial court abused discretion when it conditioned release of child support payments on discontinuation of former wife's alleged interference with former husband's visitation rights, since that issue was not before court. Rathmell v. Gardner, 434 N.E.2d 1156 (Ill., 1982).

Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) confers jurisdiction over child support matters notwithstanding prior or contemporaneous action in other proceedings. People ex rel. Argo v. Henderson, 422 N.E.2d 1005 (Ill., 1981).

In proceeding wherein circuit court modified Oregon judgment, which dissolved marriage, after the enrollment of such judgment, circuit court was not bound by a Florida court's modification of the judgment in a proceeding under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) in light of fact that such court had been without subject-matter jurisdiction to modify former husband's child support obligations existing under the Oregon judgment. Coons v. Wilder, 416 N.E.2d 785 (Ill., 1981).

§ 1211. Contents and Filing of Petition for Support; Venue.

(a) The petition shall be verified and shall state the name and so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for dissolution of marriage, declaration of invalidity of marriage, legal separation, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (P.A. 76-1090, § 11, eff. Aug. 28, 1969; am.P.A. 81-230, § 9, eff. Aug. 28, 1969.)

Cases

Petition under Uniform Reciprocal Enforcement of Support Act (par. 1201 et. seq. of this chapter) is distinct and apart from prior or contemporaneous actions in other related proceedings. Rathmell v. Gardner, 434 N.E.2d 1156 (Ill., 1982).

Where personal jurisdiction was acquired over former husband in 1963 support proceedings in Illinois, and under the law then in effect the Illinois court retained jurisdiction of the matter for the purposes of enforcement and modification, no additional summons was necessary in 1970 Illinois proceeding wherein former wife obtained default judgment against former husband representing arrears which had accrued in child support. Cahn v. Cahn, 459 N.Y.S.2d 657 (N.Y.City Civ.Ct., 1982).

§ 1212. Officials to Represent Obligee.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court, the County Department of Public Aid or the Supervisor of General Assistance shall represent the obligee in any proceeding under this Act, except where a claim is referred to the Attorney General under § 10.15 of "The Illinois Public Aid Code," approved April 11, 1967, as amended (ch. 23, par. 10.15). If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (P.A. 76-1090, § 12, eff. Aug. 28, 1969.)

§ 1213. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (P.A. 76-1090, § 13, eff. Aug. 28, 1969.)

§ 1214. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (P.A. 76-1090, § 14, eff. Aug. 28, 1969.)

§ 1215. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (P.A. 76-1090, § 15, eff. Aug. 28, 1969.)

Cases

Where State brought action seeking support for ex-wife and minor children relying upon allegations of ex-wife's affidavit that ex-husband was in arrears and did not first attempt to contact ex-husband, and where husband subsequently established that he was not in arrears in making support payments, State could be held liable to pay ex-husband's attorney's fees and expenses. State of Me. Dept. of Human Services ex rel. Smail v. Smail, 427 N.E.2d 636 (Ill., 1981).

§ 1215A. Public Aid Collection Fee.

In all cases instituted by the Illinois Department of Public Aid on behalf of a child or spouse, other than one receiving a grant of financial aid under Article IV of the Illinois Public Aid Code, on whose behalf an application has been made and approved for support services as provided by § 10.1 of that Code, the court shall impose a collection fee on the individual who owes a child or spouse support obligation in an amount equal to 10% of the amount so owed as long as such collection is required by Federal law, which fee shall be in addition to the support obligation. The imposition of such fee shall be in accordance with provisions of Title IV, Part D, of the Social Security Act and regulations duly promulgated thereunder. The fee shall be payable to the clerk of the circuit court for transmittal to the Illinois Department of Public Aid and shall continue until support services are terminated by that Department.

HISTORY: (P.A. 76-1090, § 15a; P.A. 82-979, § 5, eff. Sept. 8, 1982.)

§ 1216. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (P.A. 76-1090, § 16, eff. Aug. 28, 1969.)

§ 1217. State Information Agency.

(a) The State Department of Public Aid is designated as the State Information Agency under this Act, it shall

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the General Assembly the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(3) Forward to the court in this State, which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of 3 copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the Attorney General who may undertake the representation.

HISTORY: (P.A. 76-1090, § 17, eff. Aug. 28, 1969.)

§ 1218. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition, certificate, and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his actions.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (P.A. 76-1090, § 18, eff. Aug. 28, 1969.)

Cases

Although Uniform Reciprocal Enforcement of Support Act, (par. 1201 et seq. of this chapter) may authorize a responding court to modify the initiating State's decree, the second forum must nonetheless give full faith and credit to the first judgment to the extent that it is nonmodifiable; Ohio court, by failing to recognize Illinois rules regarding modification, modified a judgment which was not subject to modification in Illinois and thus failed to give it full faith and credit. Sullivan v. Sullivan, 424 N.E.2d 957 (Ill., 1981).

State courts, as responding courts under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter), are forbidden from entering support enforcement orders which superseded any previous order issued in a dissolution of marriage action. Coons v. Wilder, 416 N.E.2d 785 (Ill., 1981).

When a support order is issued by another court before a Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) responding court renders its decision, such court must conform its order to the amount granted in the prior proceeding. Id.

§ 1219. Further Duties of Court and Officials in the Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (P.A. 76-1090, § 19, eff. Aug. 28, 1969.)

§ 1220. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (P.A. 76-1090, § 20, eff. Aug. 28, 1969.)

§ 1221. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the

court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (P.A. 76-1090, § 21, eff. Aug. 28, 1969.)

§ 1222. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (P.A. 76-1090, eff. Aug. 28, 1969.)

§ 1223. Rules of Evidence.

In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (§ 27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (P.A. 76-1090, § 23, eff. Aug. 28, 1969.)

§ 1224. Order of Support.

If the responding court finds a duty of support it may order the oblig to furnish support or reimbursement therefor and subject the property of the obligor the order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

The court shall determine the amount of child support by using the guidelines and standards set forth in subsection (a) of § 505 of the Illinois Marriage and Dissolution of Marriage Act.

The court shall determine the amount of maintenance using the standards set forth in § 504 of the Illinois Marriage and Dissolution of Marriage Act.

HISTORY: (P.A. 76-1090, § 24, eff. Aug. 28, 1969; am.P.A. 83-1404, § 4, eff. Sept. 12, 1984; am.P.A. 84-888, § 4, eff. Sept. 23, 1985.)

In general.

Affirmative defenses which were raised by Illinois respondent in petition under Revised Uniform Reciprocal Enforcement of Support Act for reimbursement of public assistance paid by State of Utah for support of minor children and which alleged mother's fraud and ineligibility to receive public assistance were properly stricken as being immaterial or collateral in that petition sought recovery of public assistance paid parties' children and did not involve public assistance paid for benefit of mother. Paredes v. Paredes, 454 N.E.2d 1014 (Ill.App.1 Dist., 1983).

Fact that there had been no prior support order entered against former husband did not constitute grounds for dismissal of Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) petition seeking an order requiring former husband to make support payments for parties' two children. People ex rel. Lightbody v. Lightbody, 451 N.E.2d 890 (Ill.App.5 Dist., 1983).

Under the Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter), responding court may enter a new decree for a different amount of prospective child support from that of the initiating court. Sullivan v. Sullivan, 424 N.E.2d 957 (Ill., 1981).

Denial of former husband's motion to vacate default judgment for child support arrearages due under Revised Uniform Reciprocal Enforcement of Support Act did not deny former husband substantial justice, and it was not reasonable, under circumstances, to require former wife to appear second time for trial on merits, despite former husband's claim that former wife had moved during period when he was obligated to make support payments and that former wife had failed to provide forwarding address thereby violating his visitation privileges and preventing him from making support payments. Dorsey v. Dorsey, 408 N.E.2d 502 (Ill., 1980).

Regardless of whether caseworker for court service division threatened defendant with jail if he refused to sign "consent order," in a proceeding under the Uniform Reciprocal Enforcement of Support Act, par. 50 et seq. (repealed) of ch. 68, for support monies in behalf of his wife and minor children the judgment entered against defendant "by consent" would be vacated, in view of fact that the caseworker refused to allow defendant to seek legal advice and an explanation of his rights and then obtained defendant's signature on the order after threatening to send the matter to the State's attorney for legal action. People ex rel. Forbrich v. Forbrich, 1969, 113 Ill.App.2d 249, 252 N.E.2d 21.

Review.

Any objections which wife had to Ohio's modification of prior Illinois support order should have been directly appealed in Ohio; those objections could not be the basis of a collateral attack on the Ohio decree in Illinois. Sullivan v. Sullivan, 424 N.E.2d 957 (Ill., 1981).

Decisions in other States.

It was within the authority of the family court to condition support payments upon the former wife's compliance with visitation rights, but its conditional order in 1968

suspending former husband's duty to pay support to the New York Support Bureau could not modify a support order of the Illinois court in 1963, and the former wife's rights under the 1963 Illinois order were unimpaired. Cahn v. Cahn, 459 N.Y.S.2d 657 (N.Y.City Civ.Ct., 1982).

§ 1225. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the intitiating court.

HISTORY: (P.A. 76-1090, § 25, eff. Aug. 28, 1969.)

§ 1226. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (Am.P.A. 82-555, § 3, eff. July 1, 1982; P.A. 82-988, § 3, eff. Oct. 1, 1982; P.A. 83-658, § 4, eff. Jan. 1, 1984.

§ 1226.1. Withholding of Income To Secure Payment of Support.

(A) Definitions.

(1) "ORDER FOR SUPPORT" means any order of the court which provides for periodic payment of funds for the support of a child or maintenance of a spouse, whether temporary or final, and includes any such order which provides for:

(a) Modification or resumption of, or payment of arrearage accrued under, a previously existing order; or

(b) Reimbursement of support.

(2) "ARREARAGE" means the total amount of unpaid support obligations.

(3) "DELINQUENCY" means any payment under an order for support which becomes due and remains unpaid after an order for withholding has been entered under subsection (B).

(4) "INCOME" means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity

and retirement benefits, and any other payments, made by any person, private entity, Federal or State government, any unit of local government, school district or any entity created by Public Act; provided, however, that income excludes:

(a) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, Federal, State and local taxes, Social Security and other retirement and disability contributions;

(b) Union dues;

(c) Any amounts exempted by Federal law;

(d) Public assistance payments; and

(e) Unemployment insurance benefits except as provided by law.

Any other State or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply.

(5) "OBLIGOR" means the individual to whom a duty of support is owed or the individual's legal representative.

(6) "OBLIGEE" means the individual to whom a duty of support is owed or the individual's legal representative.

(7) "PAYOR" means any payor of income to an obligor.

(8) "PUBLIC OFFICE" means any elected official or any State or local agency which is or may become responsible by law for enforcement of, or which is or may become authorized to enforce, an order for support, including, but not limited to: the Attorney General, the Illinois Department of Public Aid, the Illinois Department of Mental Health and Developmental Disabilities, the Illinois Department of Children Family Services, and the various State's attorneys, clerks of the circuit court, and supervisors of general assistance.

(B) Entry of an Order for Withholding.

(1) Upon entry of any order for support on or after January 1, 1984, the court shall enter a separate order for withholding which shall not take effect unless the obligor becomes delinquent in paying the order for support or the obligor requests an earlier effective date; except that the court may require the order for withholding to take effect immediately.

(2) An order for withholding shall be granted upon petition by the obligee or public office where an order for withholding has not been previously entered.

(3) The order for withholding shall:

(a) Direct any payor to withhold an amount equal to the order for support; and

(b) Direct any payor to withhold an additional amount, not less than 10 per cent of the order for support, until payment in full of any delinquency stated in the notice of delinquency provided for in subsection (C) of this section; and

(c) State the rights, remedies and duties of the obligor under this section.

(4) At the time the order for withholding is entered, the clerk of the circuit court shall provide a copy of the order for withholding and the order for support to the obligor and shall make copies available to the obligee and public office. Any copy of the order for withholding furnished to the parties under this subsection shall be stamped "Not Valid."

(5) The order for withholding shall remain in effect for as long as the order for support upon which it is based.

(6) The failure of an order for withholding to state an arrearage is not conclusive of the issue of whether an arrearage is owing.

(C) Notice of Delinquency.

(1) Whenever an obligor becomes delinquent in payment of an amount equal to at least one month's support obligation pursuant to the order for support, the obligee or public office may prepare and serve a verified notice of delinquency, together with a form petition to stay service, pursuant to par. (3) of this subsection.

(2) The notice of delinquency shall recite the terms of the order for support and contain a computation of the period and total amount of the delinquency, as of the date of the notice. The notice shall clearly state that it will be sent to the payor, together with a specially certified copy of the order for withholding, unless the obligor pays the delinquency in accordance with par. (1) of subsection (D) or files a petition to stay service in accordance with par. (2) of subsection (D). The procedure for making payment, including to whom it should be directed, shall be set forth in the notice of delinquency.

(3) The notice of delinquency shall be served by either of the following methods:

(a) By prepaid certified mail addressed to the obligor at his or her last known address, return receipt requested; or

(b) By any method provided by law for service of summons.

(4) The obligor may execute a written waiver of the provisions of par. (1) through (3) of this subsection and request immediate service upon the payor.

(D) Procedures to Avoid Income Withholding.

(1) An obligor may prevent an order for withholding from being served on the payor by paying the total amount stated in the notice of delinquency within 20 days after service of the notice of delinquency.

(2) The obligor may prevent an order for withholding from being served by filing a petition to stay service with the clerk of the circuit court, within 20 days after service of the notice of delinquency; however, the grounds for the petition to stay service shall be limited to:

(a) A dispute concerning the existence or amount of the delinquency; and

(b) A substantial change in circumstances beyond the control of the obligor.

The clerk of the circuit court shall notify the obligor and the obligee or public office, as appropriate, of the time and place of the hearing on the petition to stay service. The court shall hold such hearing pursuant to the provisions of subsection (G).

(3) Payment of the delinquency or filing of a petition to stay service, within the 20-day period required under this subsection, shall prohibit the obligee or public office from serving the order for withholding on any payor of the obligor.

(E) Service of Order for Withholding.

(1) In order to serve an order for withholding upon a payor, an obligee or public office shall follow the procedures set forth in this subsection. After 20 days following service of the notice of delinquency, the obligee or public office shall file with the clerk of the circuit court an affidavit, with the copy of the notice of delinquency attached thereto, stating:

(a) That the notice of delinquency has been duly served and the date on which service was effected; and

(b) That full payment of the amount stated in the notice of delinquency has not been received by the obligee or, where appropriate, the clerk of the circuit court; and

(c) That the obligor has not filed a petition to stay service; and

(d) That the obligor has waived the provisions of subparagraphs (a) through (c) of this par. (1) in accordance with subsection (C)(4).

(2) Upon request of the obligee or public office, the clerk of the circuit court shall:

(a) Make available any record of payment; and

(b) Determine that the file contains a copy of the affidavit described in par. (1). The clerk shall then provide to the obligee or public office a specially certified copy of the order for withholding and the notice of delinquency indicating that the preconditions for service have been met.

(3) The obligee or public office may then serve the notice of delinquency and order for withholding on the payor, its superintendent, manager or other agent, by certified mail or personal delivery. A proof of service shall be filed with the clerk of the circuit court.

(F) Duties of Payor.

(1) It shall be the duty of any payor who has been served with a copy of the specially certified order for withholding and a notice of delinquency to deduct and pay

over income as provided in this subsection. The payor shall deduct the amount designated in the order for withholding, as supplemented by the notice of delinquency, beginning with the next payment of income which is payable to the obligor after 5 days following service of the order and notice. The payor may combine all amounts withheld for the benefit of an obligee or public office into a single payment and transmit the payment with a listing of obligors from whom withholding has been effected. The payor shall promptly pay the amount withheld to the obligee or public office at the same time income is paid to the obligor in accordance with the order for withholding and in accordance with any subsequent notification received from the public office redirecting payments. For each withholding of income, the payor shall be entitled to receive a $1 fee to be taken from the income to be paid to the obligor.

(2) Whenever the obligor is no longer receiving income from the payor, the payor shall return a copy of the order for withholding to the obligee or public office and shall provide information for the purpose of enforcing this section.

(3) Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments, or any other claims of creditors. Withholding of income under this section shall have priority. Payment as required by the order for withholding shall be a complete defense by the payor against any claims of the obligor or his creditors as to the sum so paid.

(4) No payor shall discharge, discipline, refuse to hire, or otherwise penalize any obligor because of the duty to withhold income.

(G) Petitions To Stay Service or To Modify, Suspend or Terminate Orders for Withholding.

(1) When an obligor files a petition to stay service, the court, after due notice to all parties, shall hear the matter as soon as practicable and shall enter an order granting or denying relief, modifying the order for support, amending the notice of delinquency, or otherwise resolving the matter. If the obligor has not shown a substantial change of circumstances beyond the obligor's control, or if the court finds that a delinquency existed when the notice of delinquency was mailed, in an amount of at least one month's support obligation, the court shall order immediate service of the order for withholding. Where the court cannot promptly resolve any dispute over the amount of the delinquency, the court may order immediate service of the order for withholding as to any undisputed amounts specified in an amended notice of delinquency, and may continue the hearing on the disputed amounts.

(2) At any time, an obligor, obligee, public office or clerk of the circuit court may petition the court to:

(a) Modify, suspend or terminate the order for withholding because of a modification, suspension or termination of the underlying order for support; or

(b) Modify the amount of income to be withheld to reflect payment in full of the delinquency by income withholding or otherwise; or

(c) Suspend the order for withholding because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

(3) At any time, an obligor may petition the court to terminate the withholding of income because payments pursuant to the order for withholding have been made for at least 3 years and all arrearages have been paid. For any petition brought under this paragraph the court shall suspend the order for withholding unless it finds good cause for denying the petition. If the obligor subsequently becomes delinquent in payment of the order for support, the obligee or public office may serve another order for withholding by complying with all requirements for notice and service pursuant to this section.

(4) The obligor, obligee or public office shall serve on the payor, by certified mail or personal delivery, a copy of any order entered pursuant to this subsection that affects the duties of the payor.

(5) The order for withholding shall continue to be binding upon the payor until service of any order of the court entered under this subsection.

(H) Additional Duties.

(1) An obligee who is receiving income withholding payments under this section shall notify the payor, if the obligee receives the payments directly from the payor, or the public office or the clerk of the circuit court, as appropriate, of any change of address within 7 days of such change.

(2) An obligee who is a recipient of public aid shall send a copy of any notice of delinquency filed pursuant to subsection (C) to the Bureau of Child Support of the Illinois Department of Public Aid.

(3) An obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to this section shall notify the obligee and the clerk of the circuit court of any new payor, within 7 days.

(4) When the Illinois Department of Public Aid is no longer authorized to receive payments for the obligee, it shall, within 7 days, notify the payor or, where appropriate, the clerk of the circuit court, to redirect income withholding payments to the obligee.

(5) The obligee or public office shall provide notice to the payor and clerk of the circuit court of any other support payment made, including but not limited to, a set off under Federal and State law or partial payment of the delinquency.

(6) Any public office and clerk of the circuit court which collects, disburses or receives payments pursuant to orders for withholding shall maintain complete, accurate, and clear records of all payments and their disbursements. Certified copies of payment records maintained by a public office or clerk of the circuit court shall, without further proof, be admitted into evidence in any legal proceedings under this section.

(7) The Illinois Department of Public Aid shall design suggested legal forms for proceeding under this section and shall make available to the courts such forms and informational materials which describe the procedures and remedies set forth herein for distribution to all parties in support action.

(I) Penalties.

(1) Where a payor wilfully fails to withhold or pay over income pursuant to a valid order for withholding, or wilfully discharges, disciplines, refuses to hire, or otherwise penalizes an obligor as prohibited by subsection (F), or otherwise fails to comply with any duties imposed by this section, the court, upon due notice and hearing:

(a) Shall enter judgment and direct the issuance of an execution for the total amount that the payor wilfully failed to withhold or pay over; and

(b) May order employment or reinstatement of or restitution to the obligor, or both, where the obligor has been discharged, disciplined, denied employment, or otherwise penalized by the payor.

(2) Any obligee, public office or obligor who wilfully initiates a false proceeding under this section or who wilfully fails to comply with the requirements of this section shall be punished as in cases of contempt of court.

(J) Remedies in Addition to Other Laws.

(1) The rights, remedies, duties and penalties created by this section are in addition to and not in substitution for any other rights, remedies, duties and penalties created by any other law.

(2) Nothing in this section shall be construed as invalidating any assignment of wages or benefits executed prior to January 1, 1984.

HISTORY: (P.A. 76-1090, § 26.1; P.A. 83-658, § 4, eff. Jan. 1, 1984.

§ 1227. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (P.A. 76-1090, § 27, eff. Aug. 28, 1969.)

Cases

In general.

Had trial court been cognizant of Cardenas v. Cardenas holding that a bigamous marriage which is void does not relieve husband of his duty to support children of the marriage, it may have been inclined to impose a duty of support on the defendant, whose first marriage allegedly had not been dissolved, or to at least have subjected the defendant to the presumption of paternity; thus, plaintiff had sufficient grounds for requesting a rehearing of her action for support due to misapprehension of the law and her motion was sufficient to toll the period for the filing of her notice of appeal. People ex rel. Valle v. Valle, 447 N.E.2d 945 (Ill., 1983).

Adjudication of paternity cannot be had under Uniform Reciprocal Enforcement of Support Act without confrontation between the parties. 1971 Op.Atty.Gen. No. S-318.

§ 1228. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (P.A. 76-1090, § 28, eff. Aug. 28, 1969.)

Cases

In general.

Under the Uniform Reciprocal Enforcement of Support Act (ch. 68, § 101 et seq.) a responding court lacks authority to withhold child support payments until a custodial parent makes child available for visitation. People ex rel. Winger v. Young, 1979, 33 Ill.Dec. 920, 78 Ill.App.3d 512, 397 N.E.2d 253.

§ 1229. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court. If the obligee and other dependents for whom support or reimbursement therefor has been ordered pursuant to § 24 of this Act[1] are recipients of public aid under "The Illinois Public Aid Code," approved April 11, 1967, as amended,[2] each court of this State, in respect to payments received by it as initiating court, shall order such payments to be transmitted to:

(1) The Illinois Department of Public Aid if the obligee, other dependents, or both, are recipients of aid under Articles III, IV or V of the Code,[3] or

(2) The local governmental unit responsible for the support of the obligee, other dependents, or both, if they are recipients under arts. VI or VII of the Code.[4]

The Illinois Department of Public Aid may continue to collect current maintenance or child support payments, or both, for a period not to exceed three months from the month following the month in which such obligee, other dependents, or both, cease to receive public assistance, and pay all amounts so collected to such persons. At the end of such three month period, the Illinois Department of Public Aid may continue to collect such payments if authorized by such persons to do so, and pay the net amount so collected to such persons after deducting any costs incurred in making the collection or any collection fee from the amount of any recovery made. Upon removal of the obligee, other

dependents, or both, from the public aid rolls or upon termination of any extended collection period, the Illinois Department or the local governmental unit, as the case requires, shall give written notice of such action to the court, together with request that subsequent payments be made directly to the obligee, the other dependents, or both, or to some other person or agency in their behalf. Payments under this section to the Illinois Department of Public Aid pursuant to the Child Support Enforcement Program established by Title IV-D of the Social Security Act[5/] shall be paid into the Child Support Enforcement Trust Fund. All other payments under this section to the Illinois Department of Public Aid shall be deposited in the Public Assistance Recoveries Trust Fund. Disbursements from these funds shall be as provided in the Illinois Public Aid Code. Payments received by a local governmental unit shall be deposited in that unit's general assistance fund.

HISTORY: (Am.P.A. 82-1002, § 4, eff. Sept. 17, 1982; P.A. 83-1126, § 4, eff. July 1, 1984; P.A. 84-758, § 4, eff. Oct. 1, 1985.)

§ 1229A. Notice to Clerk of Initiating or Responding Circuit Court of Payment Received by Illinois Department of Public Aid for Recording.

For those cases in which support is payable to the clerk of the initiating or responding circuit court for transmittal to the Illinois Department of Public Aid by order of court, and the Illinois Department of Public Aid collects support by assignment, offset, withholding, deduction or other process permitted by law, the Illinois Department of Public Aid shall notify the clerk of the date and amount of such collection. Upon notification, the clerk shall record the collection on the payment record for the case.

HISTORY: (P.A. 76-1090, § 29A; P.A. 82-988, § 3, eff. Oct. 1982)

§ 1230. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for dissolution of marriage, declaration of invalidity of marriage, legal separation, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendent lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (P.A. 76-1090, § 30, eff. Aug. 28, 1969; am.P.A. 81-230, § 9, eff. Aug. 28, 1979.)

1/ Par. 1224 of this chapter.
2/ Ch. 23, par. 1-1 et seq.
3/ Ch. 23, par. 3-1 et seq., 4-1 et seq., or 5-1 et seq.
4/ Ch. 23, par. 6-1 et seq. or 7-1 et seq.
5/ 42 U.S.C.A. § 651 et seq.

Cases

In general.

Petition under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is distinct and apart from prior or contemporaneous actions in other related proceedings. Rathmell v. Gardner, 1982, 61 Ill.Dec. 559, 105 Ill.App.3d 986, 434 N.E2d 1156.

Divorce court's order providing that father's "obligation to pay child support payments . . . shall cease and terminate effective immediately until further order" barred mother's subsequent action to obtain child support from father under Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). People ex rel. Noah v. Gasik, 1980, 47 Ill.Dec. 447, 91 Ill.App.3d 980, 415 N.E.2d 452.

This paragraph does not demand conformance with orders other than those dealing with support. People ex rel. St. Louis v. St. Louis, 1980, 45 Ill.Dec. 824, 90 Ill.App.3d 449, 413 N.E.2d 157.

Court did not abuse discretion in refusing to transfer action by wife for child support under Revised Uniform Reciprocal Enforcement of Support Act from county department of circuit court to divorce department of court, where divorce action between divorced parties was pending. Nelson v. Nelson, 1974, 17 Ill.App.3d 651, 308 N.E.2d 132.

§ 1231. Application of Payments.

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (P.A. 76-1090, § 31, eff. Aug. 28, 1969.)

Cases

Order of child support pursuant to Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) was not nullified by order that father pay $35 per week child support under enrolled foreign judgment of dissolution, notwithstanding that court recited payment was to be "in lieu of the present order for child support" entered in the proceeding under the Act; "in lieu of" language simply meant that father would not be required to pay twice on same order of support. People ex rel. Oetjen v. Oetjen, 1981, 48 Ill.Dec. 247, 92 Ill.App.3d 699, 416 N.E.2d 278.

This paragraph of Revised Uniform Reciprocal Enforcement of Support Act, providing that child support order pursuant to Act does not nullify and is not nullified by support order pursuant to any other law, means that duty of support may be considered and determined in proceeding under Act notwithstanding a previously entered support order, and that support order pursuant to Act will stand even though another court subsequently

issues a support order concerning same duty of support, and provision contemplates that there may be a variance in determination by separate courts of same support obligation. Id.

This paragraph of Revised Uniform Reciprocal Enforcement of Support Act, providing that support order pursuant to Act does not nullify and is not nullified by support order made pursuant to any other law, is inapplicable where a subsequent divorce court order vacates a support obligation altogether rather than merely modifies amount owed. Id.

Once a child support obligation has been abated by a postjudgment order in divorce action, there remains no duty of support which may be enforced through remedies available under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). Id.

Once support order under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) is established, it is not automatically modified or nullified by subsequent support order in divorce action unless divorce court so specifies. Id.

§ 1232. Effect of Participation in Proceeding.

Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (P.A. 76-1090, § 32, eff. Aug. 28, 1969.)

Cases

Parties to a proceeding under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) for reimbursement of public aid monies paid in support of children should be able to participate freely without exposing themselves to danger of submitting to jurisdiction of the court in responding State or in other independent proceedings. Paredes v. Paredes, 454 N.E.2d 1014 (Ill.App.1 Dist., 1983).

Proceeding instituted under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter) for reimbursement of public assistance paid by State of Utah for support of minor children was a separate, independent action to enforce support obligations and, being in addition to and not in substitution for any other remedies, was not a proceeding in which Illinois respondent could counterclaim for divorce or raise issues concerning child custody or visitation privileges or other matters commonly determined in domestic relations cases. Id.

§ 1233. Interstate Application.

This Act applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which

the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (P.A. 76-1090, § 33, eff. Aug. 28, 1969.)

§ 1234. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (P.A. 76-1090, § 34, eff. Aug. 28, 1969.)

§ 1235. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (P.A. 76-1090, § 35, eff. Aug. 28, 1969.)

§ 1236. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (P.A. 76-1090, § 36, eff. Aug. 28, 1969.)

§ 1237. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (P.A. 76-1090, § 37, eff. Aug. 28, 1969.)

§ 1238. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of a court, the County Department of Public Aid or the Supervisor of General Assistance shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (P.A. 76-1090, § 38, eff. Aug. 28, 1969.)

Cases

In general.

Count of petition in which petitioner sought registration and enforcement of New York child support order under Revised Uniform Reciprocal Enforcement of Support Act should not have been dismissed on basis that petitioner was represented by private counsel. Ball v. Haughton, 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 562, 377 N.E.2d 78 (main volume) reversed 31 Ill.Dec. 183, 76 Ill.2d 439, 394 N.E.2d 385, cert. den. 100 S.Ct. 1069, 444 U.S. 1102, 62 L.Ed.2d 789.

§ 1239. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof,

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (P.A. 76-1090, § 39, eff. Aug. 28, 1969.)

Cases

In general.

Allegations of petitioner mother that she alone supported parties' daughters and that she was entitled to reimbursement to extent that she satisfied respondent father's obligation were sufficient to establish petitioner's standing to bring petition seeking registration and enforcement of New York child support order under Revised Uniform Reciprocal Enforcement of Support Act (par. 1201 et seq. of this chapter). Ball v.

Haughton, 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 562, 377 N.E.2d 78 (main volume) reversed 31 Ill.Dec. 183, 76 Ill.2d 439, 394 N.E.2d 385, cert. den. 100 S.Ct. 1069, 444 U.S. 1102, 62 L.Ed.2d 789.

Evidence.

In action in which petitioner mother sought registration and enforcement of California and New York child support decrees, burden was on petitioner appellant, who contended that judgment in her favor was erroneously inadequate because it was based on New York decree that erroneously lowered amount of monthly support required by California decree without express finding of changed circumstances, to provide record sufficient to substantiate alleged error, and, to extent record was incomplete, it was presumed that evidence heard by New York Court was sufficient to support its judgment. Ball v. Haughton 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 362, 377 N.E.2d 78.

Where petitioner, seeking registration and enforcement of California and New York child support decrees, did not provide the appellate court with a report of proceedings or a bystander's report of New York hearing, the court had to presume that there was evidence of changed circumstances presented to New York court sufficient to support its modification of California decree. Id.

Where petitioner mother, who sought registration and enforcement under Uniform Enforcement of Foreign Judgments Act (ch. 77, par. 88 et seq.) of a foreign judgment entered in California requiring respondent father to remit to office of court periodic payments for support of parties' twin daughters until they reached their legal majority, admitted in a verified pleading that daughters reached their legal majority on July 3, 1969, she thereby conclusively established that last installment accrued on that date. Id.

Limitations.

Action brought by mother seeking registration and enforcement under Uniform Enforcement of Foreign Judgments Act of a foreign judgment entered in California, requiring father to remit periodic payments for support of parties' daughters until they reached their legal majority was barred by ch. 83, par. 16, where petition was filed more than five years after last installment accrued and all parties were nonresidents of Illinois during period from date of entry of California order and date daughters reached their majority. Ball v. Haughton, 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 562, 377 N.E.2d 78.

Although petitioner mother sought to register and enforce under Uniform Enforcement of Foreign Judgments Act foreign judgment entered in California ordering respondent father to remit to office of court periodic payments for support of parties' twin daughters until they reached their legal majority on July 3, 1969, her cause of action in effect was a suit to enforce an implied contract for reimbursement for support she allegedly provided girls, an action coming within five-year period of ch. 83, par. 16. Id

§ 1240. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has 30 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (P.A. 76-1090, § 40, eff. Aug. 28, 1969.)

Cases

Construction and application.

Application of forum's statute of limitations to application for registration of a foreign judgment is not prohibited as discriminatory where that judgment, once registered, is accorded same consideration as a domestic judgment. Ball v. Haughton, 1978, 17 Ill.Dec. 888, 60 Ill.App.3d 562, 377 N.E.2d 78 (main volume) reversed 31 Ill.Dec. 183, 76 Ill.2d 439, 394 N.E.2d 385, cert. den. 100 S.Ct. 1069, 444 U.S. 1102, 62 L.Ed.2d 789.

In view of fact that once proper application for registration of foreign judgment is made and defendant is served but either defaults or presents no defense at hearing, registered judgment is accorded same status as a domestic support order, there is no constitutional impediment to application of five-year "catch-all" limitation (ch. 83, par. 16) to petitions seeking registration and enforcement of foreign support orders. Id.

Where duty to support child had been adjudicated in pending divorce action in Kansas, it was improper at that posture of Kansas proceeding for trial court in Illinois to reject finding of Kansas court by determining that husband was not father of child. People ex rel. Franks v. Franks, 1970, 126 Ill.App.2d 51, 261 N.E.2d 502.

Full faith and credit.

Question of existence of duty of husband to support child, established by Kansas court in pending divorce action, was entitled to full faith and credit under Uniform Reciprocal Enforcement of Support Act (par. 50 et seq. of this chapter, repealed) in courts of Illinois. People ex rel. Franks v. Franks, 1970, 126 Ill.App.2d 51, 261 N.E.2d 502.

Vacation of decree.

Where divorce action in another State remained pending, delay of six months in presenting petition to vacate order dismissing wife's request for child support did not prejudice husband and entertaining of such petition at that time was in sound discretion of trial court. People ex rel. Franks v. Franks, 1970, 126 Ill.App.2d 51, 261 N.E.2d 502.

§ 1241. Uniformity of Interpretation.

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (P.A. 76-1090, § 41, eff. Aug. 28, 1969.)

Cases

Construction and application.

Revised Uniform Reciprocal Enforcement of Support Act, as uniform act (par. 1201 et seq. of this chapter), is to be so construed as to effectuate its general purpose to make uniform the laws of those States which enact it. People ex rel. Oetjen v. Oetjen, 1981, 48 Ill.Dec. 247, 92 Ill.App.3d 699, 416 N.E.2d 278.

Where Illinois is responding State under Uniform Reciprocal Enforcement of Support Act (par. 50 et seq. of this chapter, repealed) and duty to support has been established by sister State, Illinois court should not, as matter of policy, redetermine question of duty to support. People ex rel. Franks v. Franks, 1970, 126 Ill.App.2d 51, 261 N.E.2d 502.

§ 1242. Severability.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

HISTORY: (P.A. 76-1090, § 42, eff. Aug. 28, 1969.)

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INDIANA

IND. CODE ANN. §§ 31-2-1-1 to 31-2-1-39

§ 32-2-1-1. Purposes of Act.

The purposes of this chapter are to improve and extend by reciprocal legislation enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (A. 1961, ch. 309, § 1; 1979, P.L. 273, § 20.)

Cases

In general.

Action under Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) does not require pre-exising judicial determination of support duty. Johnson v. Ross, App.1980, 405 N.E.2d 569.

Cited: Shane U. Koehler, 168 Ind. App. 552, 51 Ind.Dec. 692, 343 N.E.2d 818 (1976); State ex rel. Greebel U. Endsley, 64 Ind.Dec. 285, 379 N.E.2d 440 (1978).

Paternity.

In action under Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.), evidence that defendant, in presence of his wife, signed notarized "affidavit of legitimacy" stating he "fully recognized the paternity" of her child and as a consequence child was given his name, and that during course of marriage defendant provided for child was sufficient to determine defendant, was biological father of minor child, regardless of parties' testimony to the contrary. Johnson v. Ross, App.1980, 405 N.E.2d 569.

Cited: In re M.D.H., 437 N.E.2d 119 (Ind., 1982); Hunt v. Hunt, 465 N.E.2d 203 (Ind.App.Dist.1984).

§ 31-2-1-2. Definitions.

In this chapter unless the context otherwise requires:

(a) "STATE" includes any State, territory, or possessions of the United States, the District of Columbia, and any foreign State in which this or a substantially similar reciprocal law has been enacted.

(b) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(c) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(d) "COURT" means the circuit court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(e) "LAW" includes both common and statute law.

(f) "DUTY OF SUPPORT" includes any duty of child or spousal support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise.

(g) "OBLIGOR" means any person owing a duty to support.

(h) "OBLIGEE" means any person to whom a duty of support is owed and a State or political subdivision thereof.

(i) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by the provisions of this chapter.

(j) "SUPPORT ORDER" means any judgment, decree, or order of support whether temporary or final, whether subject to modification, revocation, or remission regardless of the kind of action in which it is entered.

(k) "RENDERING STATE" means any State in which a support order is originally entered.

(l) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(m) "REGISTER" means to file in the Registry of Foreign Support Orders as required by the court.

(n) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

(o) "CONTRACTING ATTORNEY" means an individual who contracts with the child support division of the State department of public welfare under Ind.Code 12-1-6.1-10.

HISTORY: (A. 1961, ch. 309, § 2; 1979, P.L. 275, § 1; 1982, P.L. 21, § 51; P.L. 53-1985, § 13.)

Cases

Cited: D.L.M v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982).

§ 31-2-1-3. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (A. 1961, ch. 309, § 3.)

§ 31-2-1-4. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 7 (§ 31-2-1-7) of this chapter, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (A. 1961, ch. 309, § 4; 1979, P.L. 273, § 21.)

§ 31-2-1-5. Interstate Rendition.

The Governor of this State (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (A. 1961, ch. 309, § 5.)

§ 31-2-1-6. Conditions of Interstate Rendition.

(a) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(b) When under this or a substantially similar statute, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If an action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (A. 1961, ch. 309, § 6; 1979, P.L. 273, § 22.)

§ 31-2-1-7. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (A. 1961, ch. 309, § 7; 1979, P.L. 273, § 23.)

§ 31-2-1-8. Remedies of State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provision hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (A. 1961, ch. 309, § 8.)

§ 31-2-1-9. How Duties of Support Are Enforced.

All duties of support, including arrearages, are enforceable by action irrespective of the relationship between the obligor and the obligee.

HISTORY: (A. 1961, ch. 309, § 9.)

§ 31-2-1-10. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the circuit court of this State.

HISTORY: (A. 1961, ch. 309, § 10.)

Cases

In general.

Where issue of the validity of the first judgment of the trial court in petitioner's reciprocal support proceeding was decided pursuant to a motion to dismiss, in actuality a motion for summary judgment, which raised the defense of res judicata, this was sufficient to place the jurisdiction of the trial court over the earlier proceedings in issue, and a motion for relief from judgment was neither necessary nor appropriate; if grounds existed, such a motion should have been filed before the filing of a second reciprocal support petition in the trial court. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Trial court may have erred in petitioner's reciprocal support proceeding in failing to accord full faith and credit to a previous Illinois determination respecting whether respondent was father of child, but such was a mere error of law which did not operate to deprive trial court of its subject-matter jurisdiction to determine paternity in prior reciprocal support proceeding and, hence, did not preclude judgment of trial court from

acting as a bar under principle of res judicata to petitioner's subsequent reciprocal support proceeding. Id.

Where duty of support is imposable by law no previous court judgment is required to create such obligation. Johnson v. Ross, 405 N.E.2d 569 (Ind., 1980)

Jurisdiction.

Where trial court had jurisdiction of the class of cases to which particular case belonged, it had jurisdiction of the subject matter in that case. State ex. rel. Johnson v. Reeves, 234 Ind. 225, 125 N.E.2d 794 (1955).

Where trial court has jurisdiction of person under this Act, any question pertaining thereto was waived by general appearance. Id.

§ 31-2-1-11. Contents of Complaint for Support.

The complaint shall be verified and shall state the name and, so far as known to the complainant, the address and circumstances of the respondent and his dependents for whom support is sought and all other pertinent information. The complainant may include in or attach to the complaint any information which may help in locating or identifying the respondent such as a photograph of the respondent, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (A. 1961, ch. 309, § 11.)

§ 31-2-1-12. Duties of Prosecuting Attorney.

It shall be the duty of the prosecuting attorney of each country in this State to:

(1) Prepare and file on behalf of an obligee defined herein or on behalf of any State or political subdivision thereof having furnished support to an obligee when requested to do so, and

(2) Carry on all proceedings under this chapter in any case referred by the court wherein the State of Indiana is the responding State, provided that nothing herein shall prevent an obligee's being represented by an attorney in initiating any proceeding under the provisions of this chapter.

HISTORY: (A. 1961, ch. 309, § 12; 1979, P.L. 273, § 24; 1982, P.L. 21, § 52.)

§ 31-2-1-13. Complaint for a Minor.

A complaint on behalf of an obligee under eighteen (18) years of age may be brought by a person having legal custody of such obligee without appointment as guardian ad litem.

HISTORY: (A. 1961, ch. 309, § 13; 1973, P.L. 296, § 4.)

§ 31-2-1-14. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three (3) copies of (1) the complaint, (2) its certificate and (3) this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (A. 1961, ch. 309, § 14; 1979, P.L. 273, § 25.)

Cases

Waiver of jurisdiction.

Where there was nothing to show that relator at any time in trial court raised question or jurisdiction, and failure of judge in Arizona to properly certify copy of Arizona act was first raised in Indiana supreme court, it could not have been said that question of jurisdiction of the particular case was raised "at the earliest opportunity," and by failure to do so at the proper time in trial court, relator waived any question pertaining thereto. State ex rel. Johnson v. Reeves, 234 Ind. 225, 125 N.E.2d 794 (1955).

§ 31-2-1-15. Costs and Fees.

There shall be no filing fee or other costs taxable to the obligee but a court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property and stenographic service of both complainant and respondent or either, be paid by the obligor or the county, city, municipality, State or other political subdivision thereof.

HISTORY: (A. 1961, ch. 309, § 15.)

§ 31-2-1-16. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction it may: (1) as an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or (2) as a responding State, obtain the body of the respondent by appropriate process.

HISTORY: (A. 1961, ch. 309, § 16.)

§ 31-2-1-17. State Information Agency.

The State Department of Public Welfare is hereby designated as the State Information Agency under this chapter, and said department shall:

(1) Compile a list of the courts and their addresses in this State having juridsiction under this chapter and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar statute; and

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

HISTORY: (A. 1961, ch. 309, § 17; 1979, P.L. 273, § 26.)

§ 31-2-1-18. Further Duties of Court and Officials in the Responding State.

(a) The prosecuting attorney or contracting attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property and if, due to inaccuracies of the complaint or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney or contracting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the court in the initiating State.

(b) If the respondent or his property is not found in the county and the prosecuting attorney or contracting attorney discovers by any means that respondent or his property may be found in another county of this State on in another State he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon both the court of the other county or State and any court of this State receiving the documents and the prosecuting attorney or contracting attorney have the same powers and duties under this chapter as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the prosecuting attorney or contracting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

HISTORY: (A. 1961, ch. 309, § 18; 1979, P.L. 275, § 2; 1982, P.L. 21.)

§ 31-2-1-19. Procedure.

The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for enforcement of the type of duty of support claimed.

HISTORY: (A. 1961, ch. 309, § 19; 1979, P.L. 273, § 27.)

§ 31-2-1-20. Hearing and Determination.

If the complainant is absent from the responding State and the respondent presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (A. 1961, ch. 309, § 20.)

§ 31-2-1-21. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (A. 1961, ch. 309, § 21; 1979, P.L. 273, § 28.)

§ 31-2-1-22. Rules of Evidence.

In hearing under this chapter, the court shall be bound by the same rules of evidence that bind the juvenile courts of this State.

HISTORY: (A. 1961, ch. 309, § 22; 1979, P.L. 273, § 29.)

§ 31-2-1-23. Order of Support.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. The court, a contracting attorney, and the prosecuting attorney of any jurisdiction where the obligor is present or has property have the same powers and duties to enforce the order as have those of the jurisdiction where it was first issued. If enforcement is impossible or cannot be completed in the jurisdiction where the order was issued, the prosecuting attorney or contracting attorney shall transmit a certified copy of the order to the prosecuting attorney of any jurisdiction where it appears that procedures to enforce payment of the amount due would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (A. 1961, ch. 309, § 23; 1979, P.L. 275, § 3; 1982, P.L. 21, § 54.)

Cases

Duty of support.

The responding court is required under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) to find a duty of support and, though the support order of the initiating State is generally sufficient for this purpose, the obligor is permitted to assert any defense available to him in an action on a foreign judgment and, if the responding court finds that the foreign judgment is not entitled to full faith and credit or did not dispose of the issue of duty to support, it may reach the merits of that issue, at

which stage the paternity of the child may be determined. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Foreign judgments.

Trial court may have erred in petitioner's reciprocal support proceeding in failing to accord full faith and credit to a previous Illinois determination respecting whether respondent was father of child, but such was a mere error of law which did not operate to deprive trial court of its subject-matter jurisdiction to determine paternity in prior reciprocal support proceeding and, hence, did not preclude judgment of trial court from acting as a bar under principle of res judicata to petitioner's subsequent reciprocal support proceeding. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Jurisdiction.

Indiana court had jurisdiction to enter prospective support order against divorced father of child when Tennessee divorce court did not do so, where both father and mother of child had become Indiana residents, and divorced father himself had invoked jurisdiction of Indiana court to modify prior divorce decree. Hunt v. Hunt, 465 N.E.2d 203 (Ind.App.1 Dist.1984).

Support orders imposed or impossible to enforce in one State can be enforced in another without any jurisdictional impediment. Id.

§ 31-2-1-24. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (A. 1961, ch. 309, § 24.)

§ 31-2-1-25. Additional Powers of Responding Court Over Respondent.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.

(b) To require the respondent to make payments at specified intervals to the clerk of the court.

(c) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (A. 1961, ch. 309, § 25.)

Contempt.

Where prima facie case against father for failure to make child support payments was made out by records maintained by office of clerk of court, to which payments were required by court order to be made, but father testified that he had made all payments directly to mother and mother admitted that father had made direct payments of support to her, trial court did not err in denying mother's motion to hold father in contempt. Castro v. Castro, App.1982, 436 N.E.2d 366.

§ 31.2.1.26. Transmittal of Payments and Statements to Court of Initiating State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(b) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (A. 1961, ch. 309, § 26.)

§ 31.2.1.27. Receipt and Disbursement of Payments by Courts of this State as Initiating State.

The courts of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

HISTORY: (A. 1961, ch. 309, § 27.)

§ 31.2.1.28. Proceedings Not To Be Stayed.

No proceeding under this chapter shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution, habeas corpus or custody proceeding.

HISTORY: (A. 1961, ch. 309, § 28; 1979, P.L. 273, § 30.)

§ 31.2.1.29. Application of Payments.

No order of support issued by a court of this State when acting as a responding State shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (A. 1961, ch. 309, § 29.)

Cases

In general.

Provisions of this section of the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) that no order of support issued by a court in the responding State shall supersede any other order of support did not operate to deprive the court in petitioner's prior reciprocal support proceeding of its jurisdiction to find that respondent was not the child's father and did not preclude judgment in prior proceeding from acting as a bar under principles of res judicata to a second reciprocal support proceeding notwithstanding that finding in first proceeding superseded a prior support order in another State. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Modification of support order.

The initiating State is not required under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) to grant full faith and credit to the support orders of a responding State when the initiating State considers a subsequent petition for modification or calculates arrearages due under the divorce decree. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Modification of a support order in a proceeding in the responding State under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) does not supersede the original order in a proceeding before the initiating court. Id.

Under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1. et seq.) support orders of an initiating State can be modified in the responding State upon proper showing. Id.

Full faith and credit.

Where an Indiana resident successfully pursued an action for enforcement of an Indiana support order in Oklahoma under the Uniform Reciprocal Enforcement of Support Act, and subsequent thereto, an action for contempt and arrearages in Indiana based on the original support order was commenced, the Indiana court, in considering compliance with its original order, need not have given full faith and credit to the Oklahoma order and was not required to conform its order to the amounts ordered in Oklahoma. Banton v. Mathers, 159 Ind.App. 634, 41 Ind.Dec. 313, 309 N.E.2d 167 (1974).

Voidable judgments.

Even if petitioner was entitled to file a motion for relief from the first judgment in her reciprocal support proceeding, the petitioner would not have been entitled to relief since the first judgment was not void, only voidable, and petitioner failed to demonstrate any change of factual circumstances or any exceptional circumstances as would have entitled her to such relief. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Support orders of an initiating State can be modified in this State upon proper showing, however, such modifications do not supersede the original order in proceedings before the initiating court. Id.

§ 31-2-1-30. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (A. 1961, ch. 309, § 30; 1979, P.L. 273, § 31.)

Cases

In general.

This section providing that participation in any proceeding under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) does not confer jurisdiction upon trial court in any other proceeding was not addressed to subject matter jurisdiction, but was addressed to personal jurisdiction and, hence, did not preclude trial court in petitioner's earlier support proceeding from finding that respondent was not child's father and did not preclude first proceeding from thereby acting as a bar under principles of res judicata to petitioner's second support proceeding against respondent. D.L.M. v. V.E.M., App.1982, 438 N.E.2d 1023, 31 A.L.R. 4th 336.

This section is not addressed to subject matter jurisdiction; it refers only to personal jurisdiction. Id.

§ 31-2-1-31. Intercounty Application.

This chapter is applicable when both the complainant and the respondent are in this State but in different counties. If the court of the county in which this petition is filed finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and finds that a court of another county in this State may obtain jurisdiction or the respondent or his property, the clerk of the court shall send three (3) copies of the complaint and a certification of the findings to the court of the county in which the respondent or his property is found. The clerk of the court of the county receiving these copies shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the State as a responding State.

HISTORY: (A. 1961, ch. 309, § 31; 1979, P.L. 273, § 32.)

Cases

Where child was born out of wedlock and thereafter mother married purported father and later, purported father, in order to change the name on the birth certificate, signed an affidavit in which he acknowledged being the father of the child and accepted the responsibilities of a father "without reservation" and provided for the care of the child, and later the parties were divorced, a court in a proceeding under this section could find such person was the biological father of the child and owed a duty of support even though both parties to the proceeding testified that he was not the father. Johnson v. Ross, 405 N.E.2d 569 (Ind., 1980).

§ 31-2-1-32. Additional Remedies; Duty of Support Based on Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections of this chapter.

HISTORY: (A. 1961, ch. 309, § 32; 1979, P.L. 273, § 3.)

§ 31-2-1-33. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (A. 1961, ch. 309, § 33.)

§ 31-2-1-34. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (A. 1961, ch. 309, § 34.)

§ 31-2-1-35. Petition for Registration.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the complaint subject only to subsequent order of confirmation.

HISTORY: (A. 1961, ch. 309. § 35.)

§ 31-2-1-36. Jurisdiction and Procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to any action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

HISTORY: (A. 1961, ch. 309, § 36.)

Cases

In general.

The responding court is required under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) to find a duty of support and, though the support order of the intiating State is generally sufficient for this purpose, the obligor is permitted to assert any defense available to him in an action on a foreign judgment and, if the

responding court finds that the foreign judgment is not entitled to full faith and credit or did not dispose of the issue of duty to support, it may reach the merits of that issue, at which stage the paternity of the child may be determined. D.L.M. v. V.E.M., 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Full faith and credit.

Full faith and credit clause (U.S.C.A. Const. art. 4, § 1) applies to all final judgments, and those portions of judgment which are not final, i.e., custody and support, fall within doctrine of comity and may be enforced to same extent as in State of origin. Ventura County, State of Cal. v. Neice, App.1982, 434 N.E.2d 907.

Although because foreign support order was modifiable it was not entitled to full faith and credit as final judgment, confirmation and enforcement of support order were required under Uniform Reciprocal Enforcement of Support Act (this chapter) and strong policy evidenced by it of granting comity to such support orders, there being no ground for collateral attack upon the paternity judgment. Id.

Enforcement of judgment.

The responding court is required under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) to find a duty of support and, though the support order of the initiating State is generally sufficient for this purpose, the obligor is permitted to assert any defense available to him in an action on a foreign judgment and, if the responding court finds that the foreign judgment is not entitled to full faith and credit or did not dispose of the issue of duty to support, it may reach the merits of that issue, at which stage the paternity of the child may be determined. D.L.M. v. V.E.M. 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

§ 31-2-1-37. Effect and Enforcement.

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in the State.

HISTORY: (A. 1961, ch. 309, 37.)

Cases

In general.

A foreign support order, when confirmed by an Indiana court, becomes for all intents and purposes an Indiana support order. State ex rel. Greebel v. Endsley, 64 Ind.Dec. 285, 379 N.E.2d 440 (1978).

Duty of support.

Although because foreign support order was modifiable it was not entitled to full faith and credit as final judgment, confirmation and enforcement of support order were required under Uniform Reciprocal Enforcement of Support Act (this chapter) and strong policy evidenced by it of granting comity to such support orders, there being no ground for

collateral attack upon the paternity judgment. Ventura County, State of Cal. v. Neice, 434 N.E.2d 907 (Ind.App.1982).

Enforcement of judgment.

The responding court is required under the Uniform Reciprocal Enforcement of Support Act (§ 31-2-1-1 et seq.) to find a duty of support and, though the support order of the initiating State is generally sufficient for this purpose, the obligor is permitted to assert any defense available to him in an action on a foreign judgment and, if the responding court finds that the foreign judgment is not entitled to full faith and credit or did not dispose of the issue of duty to support, it may reach the merits of that issue, at which stage the paternity of the child may be determined. D.L.M. v. V.E.M., 1982, 438 N.E.2d 1023 (Ind.App.1982), 31 A.L.R. 4th 336.

Collateral attack of a foreign judgment is permitted only in regard to the jurisdiction of the rendering court. Ventura County, State of Cal. v. Neice, (App. 1982) 434 N.E.2d 907.

§ 31-2-1-38. Uniformity of Interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (A. 1961, ch. 309, § 40; 1979, P.L. 273, § 34.)

§ 32-2-1-39. Short Title.

This chapter may be cited as the "Uniform Reciprocal Enforcement of Support Act."

HISTORY: (A. 1961, ch. 309, § 41; 1979, P.L. 273, § 35.)

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IOWA

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§ 252A.1. Title and Purpose.

This chapter may be cited and referred to as the "Uniform Support of Dependents Law." The purpose of this uniform chapter is to secure support in civil proceedings for dependent spouses, children and poor relatives from persons legally responsible for their support.

HISTORY: (Am.A. 1976 (66 G.A.) ch. 1141, § 3.)

Cases

Construction and application.

Equal protection does not necessarily require the legislature to adopt parental support procedures for illegitimate children which are coterminous with those accorded legitimate children, but any restrictions on the procedures available to illegitimate children must be substantially related to a legitimate State interest. State ex rel. Rake v. Ohden, 346 N.W.2d 826 (Iowa, 1984).

Action under Uniform Support of Dependents Law is in equity and review by Court of Appeals, therefore, is de novo. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870 (Iowa App., 1983).

If order, which was entered after hearing on defendant's motion to adjudicate law points and which dismissed Uniform Reciprocal Enforcement of Support Act suit to establish paternity and obtain child support, were considered to be an "order," District Court had authority to entertain mother's motion for rehearing, which was based on contention that the order was not binding on her due to lack of notification of the hearing, to hold another hearing and to enter a new order; if the order for dismissal were considered to be a "judgment," court had discretion to treat motion for rehearing as being in nature of request to set aside a default and could grant hearing for such lack of notice. Stearns v. Kean, 1981, 303 N.W.2d 408.

Ch. 252B does not relieve the county attorney of duties imposed by Ch. 252A. Claims for support, other than child support, should not be referred to the child support recovery unit. Op.Atty.Gen. (Rush), Aug. 30, 1977.

Decree of divorce or dissolution is not res judicata in subsequent action under this section, but it appears to be necessary for a change of circumstances to be shown if an increase in the amount of support payments is sought under this chapter. Op.Atty.Gen. (Redmond), Aug. 2, 1977.

Paternity issue is proper subject of inquiry under Iowa's Uniform Support of Dependents Law. Greenstreet v. Clark, 1976, 239 N.W.2d 143.

Job of interpretation of statutory provisions is aided by decisions from other jurisdictions concerning similar provisions. Id.

Legislature, by enacting Uniform Support of Dependents Law, mandated that proceeding under such law be commenced by filing verified petition in equity. Id.

While Iowa uniform statute on support obligations applies to intrastate situations, it is not exclusive, and common-law duties also exist. Kelley v. Iowa Dept. of Social Services, 1972, 197 N.W.2d 192, appeal dismissed 93 S.Ct. 170, 409 U.S. 813, 34 L.Ed.2d 69.

In proceeding to review termination by Iowa Department of Social Services of an ADC grant, Iowa substantive law would be applied in ascertaining general support obligation of stepparent. Id.

One of the principal purposes of the Uniform Support of Dependents Act is to supplant inadequate laws for enforcement of duty to support upon deserting husband who abandons his family and is beyond process of State where his family resides; thus, it is not important whether father departed from family home or wife had moved from jurisdiction to another, especially if she established new residence in good faith. Beneventi v. Beneventi, 1971, 185 N.W.2d 219.

Uniform Support of Dependents Law does not authorize filing of another action requiring personal jurisdiction such as counterclaim for relief ordinarily entertained by divorce or like proceedings. Id.

Defendant, adjudged in court of sister State to be father of illegitimate child, was liable in Iowa uniform support proceeding for support of such illegitimate child. Engelson v. Mallea, 1970, 180 N.W.2d 127.

Where mother of illegitimate child obtained judgment in paternity action against putative father in action in Minnesota, and thereafter she brought action under Uniform Support of Dependents Act in Iowa against putative father and it was not established that father was not in Iowa during period for which support was asked, law governing putative father's duty to support was Iowa law. Id.

Where prior paternity action was brought in Minnesota, and putative father was adjudged to be the father of the illegitimate child, and only objection that putative father made to that judgment was misnomer, which was untenable, that determination of parentage was res judicata in Minnesota where judgment was rendered and also in Iowa where mother brought action under Uniform Support of Dependents Act against putative father, since judgment was entitled to full faith and credit in Iowa court. Id.

Where Iowa amended its Uniform Support of Dependents Act by adding substantial portions of the Uniform Reciprocal Enforcement of Support Act, duty of Iowa supreme court was to reconcile the various portions of uniform support law, as thus amended, and to endeavor to carry out beneficent purpose of that law as a whole. Id.

Where paternity action was brought in Minnesota against one sued as Mallea, though his true name was Millea, and he appeared and defended, and it was found that he was father of illegitimate child, and thereafter mother brought action against him in Iowa under the Uniform Support of Dependents Act as Mallea, and he was personally served, variance in names was not substantial, and his special appearance was properly overruled by Iowa court. Id.

Where, by original divorce decree, father was required to pay $66.66 to mother every month for support of each child, but four years had elapsed and, not only had purchasing power of dollar diminished, but father was financially able and mother had little or no

independent resources, mother was reasonably entitled to a child support judgment against father in the sum of $100 per month for each of the three children, until each respectively attained age of 18, or would sooner become emancipated, marry, or die. Wells v. Wells, 1969, 168 N.W.2d 54.

County is not liable for medical expenses under § 270.4, but may be liable in certain instances for support of poor if proper procedures are instituted pursuant to this chapter or chapters 252 and 255. Op.Atty.Gen. (Bentz), Sept. 23, 1969.

Legislative intent.

Legislature, in adopting Uniform Support of Dependents Law, did not intend to include review or determination of issues involved in suit for divorce, or that county attorney, a prosecuting official who is designated to represent dependents in proceeding, should be transformed into attorney representing private client in divorce proceeding. Beneventi v. Beneventi, 1971, 185 N.W.2d 219.

Jurisdiction.

Uniform Support of Dependents Act grants no jurisdiction of parties for any other purpose than to determine liability for support. Beneventi v. Beneventi, 1971, 185 N.W.2d 219.

District Court lacked jurisdiction to condition child support under Uniform Support of Dependents Law on father's right to have children visit him outside State of mother's residence and on mother's cooperation in arranging transportation of children and sharing in transportation costs. Id.

Support of illegitimate child should be ordered to age 17 in action under Uniform Support of Dependents Act, and jurisdiction should be reserved to order support thereafter if the child appears at that time unable to support herself and is likely to become a public charge. Engelson v. Mallea, 1970, 180 N.W.2d 127.

Where putative father of illegitimate child was sued in Minnesota and appeared and defended despite misspelling of his name, and where there was no evidence that Minnesota law differed from Iowa law with respect to misnomer, Minnesota paternity judgment was not invalid for misnomer for purposes of action in Iowa under Uniform Support of Dependents Act. Id.

Actions and proceedings.

State Department of Social Services failed to make necessary showing of change in circumstances in order to obtain increase in amount of child support previously ordered by court and, thus, was not entitled to recover from father for public assistance furnished his two children. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342.

Evidence.

Trial court, in State Department of Social Service's action under Uniform Support of Dependents Law § 252A.1 et seq., to recover from father for public assistance furnished his two children, erred in not receiving in evidence divorce decree with its stipulation for support of children and, thus, appellate court would receive and consider it. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342

Paternity.

Testimony, inter alia, that mother had sexual relations with no one other than defendant in 11-month period preceding birth of child, and that defendant was at first happy about pregnancy when mother of child told him about it and later told her that he was too young to be a father was sufficient to support finding of paternity. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870 (Iowa App., 1983).

Petitioner has burden of establishing paternity by preponderance of the evidence. Id.

Unverified report of blood tests results and affidavit subsequently executed and attached to report, both of which were submitted by doctor to assistant county attorney, rather than directly to the court, were inadmissible, and results of blood test performed by doctor should not have been considered in determining paternity, since § 675.41 governing blood tests in paternity proceedings requires expert conducting blood tests to make his report directly to the court rather than sending it to one of the parties.

In action seeking support for child born out of wedlock, burden of persuasion on issue of paternity is on petitioners, by a preponderance of the evidence, and the law does not require corroboration of the mother, though presence or absence of corroboration may influence the fact finder in the ultimate finding. Foreman v. Wilcox, 1981, 305 N.W.2d 703.

In action under the Uniform Support of Dependents Law, evidence was sufficient to establish paternity. Id.

Paternity may be determined in a proceeding brought pursuant to Uniform Reciprocal Enforcement of Support Act. Stearns v. Kean, 1981, 303 N.W.2d 408.

§ 252B.5, which provides in part that child support recovery unit established by Child Support Recovery Act (§ 252B.1 et seq.) shall provide "aid in establishing paternity and securing a court order for support pursuant to [chapter 675] of the Code" and "aid in enforcing through court proceedings an existing court order for support issued pursuant to [chapter 252A, 598, and 675] of the Code," establishes no new theories of child support recovery but merely creates vehicle to establish paternity under ch. 675 of Code and to enforce existing court orders for support State ex rel. Krupke v. Witkowski, 1977, 256 N.W.2d 216.

By reason of presumption of legitimacy of children born in wedlock, father's admission of daughter's paternity in action by Department of Social Services for reimbursement of public support for amounts furnished his two children was binding as she was born during the marriage. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342.

In State Department of Social Services' action under the Uniform Support of Dependents Law, § 252A.1 et seq., to recover from father for public assistance furnished his two children, evidence, including divorce decree with stipulation wherein father agreed to pay lump sum amount for the support of the minor children of the parties, established father's paternity of children, including child who was born after separation but prior to divorce. Id.

Paternity is a proper issue in a proceeding for reimbursement of public support. Id.

Review.

Appellate review under Uniform Support of Dependents Law is not limited to assigned error. State ex rel. Rake v. Ohden, 346 N.W.2d 826 (Iowa, 1984).

In de novo review of action under Uniform Support of Dependents Law, Court of Appeals gives weight of fact findings of trial court, especially when considering credibility of witnesses, but it is not bound by them. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870 (Iowa App., 1983).

Review of equitable action for reimbursement of public support is de novo; findings of trial court are given weight but are not binding. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342.

Limitation of actions.

Two-year statute of limitations provided in § 675.33 for paternity actions under more traditional statutory procedure denies rights of illegitimate children to equal protection in light of fact that alternative paternity procedure under Uniform Support of Dependents Law is subject to no statute of limitations during child's minority. State ex rel. Rake v. Ohden 346 N.W.2d 826 (Iowa, 1984).

Action, which was brought by county almost five years after child's birth, in which county and mother sought to establish that defendant was father of child and to obtain child support and which was transferred pursuant to Uniform Reciprocal Enforcement of Support Act, was not barred by general five-year statute of limitations, in light of fact that mother would not have been barred from bringing the action because of operation of statute providing that minors could bring actions within one year after termination of minority and that county had "same right," as mother, to invoke URESA for "reimbursement of expenditures" and for "obtaining continuing support." Stearns v. Kean, 1981, 303 N.W.2d 408.

Two-year limitation provision contained in the § 675.33, viz., "Proceedings to enforce the obligation of the father shall not be brought after the lapse of more than two years from the birth of the child, unless paternity has been judicially established, or has been acknowledged by the father in writing or by the furnishing of support," does not bar an action for support of a minor child under the Uniform Support of Dependents Law. State v. ex rel. Andrew v. Cardella, 1979, 282 N.W.2d 117.

Jury trial.

Right to a jury trial in a paternity action is not fundamental. State ex rel. Rake v. Ohden, 1984, 346 N.W.2d 826.

A jury trial is not available in a paternity and support suit under the Uniform Support of Dependents Law. Id.

§ 252A.2. Definitions.

As used in this chapter, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

1. "STATE" means any State, territory, or possession of the United State, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a similar reciprocal law is in effect.

2. "COURT" shall mean and include any court by whatever name known, in any State having reciprocal laws or laws substantially similar to this chapter upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such State.

3. "CHILD" includes but shall not be limited to a stepchild, foster child or legally adopted child and means a child actually or apparently under eighteen years of age, and a dependent person eighteen years of age or over who is unable to maintain himself and is likely to become a public charge.

4. "DEPENDENT" shall mean and include a spouse, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the State or States wherein the petitioner and the respondent reside.

5. "PETITIONER" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this chapter.

6. "RESPONDENT" shall mean and include each person against whom a proceeding is instituted pursuant to this chapter.

7. "PETITIONER'S REPRESENTATIVE" shall mean and include a corporation counsel, county attorney, State's attorney, Commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this chapter or under the laws of the State or States wherein the petitioner and the respondent reside.

8. "SUMMONS" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the State or States wherein the petitioner and the respondent resides as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this chapter.

9. "INITIATING STATE" shall mean the State of domicile or residence of the petitioner.

10. "RESPONDING STATE" shall mean the State wherein the respondent resides or is domiciled or found.

11. "REGISTER" means to file a foreign support order in the Registry of Foreign Support Orders maintained as a filing in equity by the clerk of the court.

12. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

HISTORY: (Am.A. 1972 (64 G.A.), ch. 1027, § 30; A. 1972 (64 G.A.), ch. 1124, § 133, eff. July 1, 1973; A. 1973 (65 G.A.), ch. 140, § 32; A. 1973 (65 G.A.), ch. 190, § 1, eff. Aug. 15, 1973; A. 1976 (66 G.A.), ch. 1141, § 4; A. 1982 (69 G.A.), ch. 1004, §§ 6,7.)

Cases

Construction and application.

Where wife, in bringing action for separate maintenance, for some reason adopted procedure under Uniform Support of Dependents Law, she could not discard such procedure in part, and her attorney's fees were not a necessary part of her support or necessary to enable her to prosecute the action, since the Uniform Support of Dependents Law contemplates that proceedings shall be conducted by public officers without expense to petitioners for attorney's fees. Peters v. Peters, 1957, 249 Iowa 110, 86 N.W.2d 206.

Suit by wife against husband under Uniform Support of Dependents Law for separate maintenance was, in fact, merely a suit by a wife for separate maintenance, and therefore rules of substantive law governing her right to separate maintenance were applicable. Id.

Thirty-year-old incapacitated son was "dependent." Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Provision of this section which makes it duty of county attorney to appear for a petitioner does not prohibit institution of such proceeding by a practicing attorney of petitioner's choice. Id.

§ 252A.3. Spouse Liable for Support.

For the purpose of this chapter:

1. A spouse in one State is hereby declared to be liable for the support of his wife or her husband and any child or children under eighteen years of age and any other dependent residing or found in the same State or in another State having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

2. A parent in one State is hereby declared to be liable for the support of his or her child or children under eighteen years of age residing or found in the same State or in another State having substantially similar or reciprocal laws, whenever the father or mother of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if the liable parent is possessed of sufficient means or able to earn such means, he or she may be required to pay for the support of such child or children a fair and reasonable sum according to his or her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this chapter.

3. The parents in one State are hereby declared to be severally liable for the support of a dependent child eighteen years of age or older residing or found in the same State or in another State having substantially similar or reciprocal laws, whenever such child is unable to maintain himself and is likely to become a public charge.

4. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

5. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed the legitimate child or children of both parents.

6. A man or woman who was or is held out as her husband or his wife by a person by virtue of a common law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed the legitimate spouse of such person.

7. Notwithstanding the fact that the respondent has obtained in any State or country a final decree of divorce or separation from his wife or her husband or a decree dissolving his or her marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

8. Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the respondent was present during the period for which support is sought. The respondent is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

9. The natural parents of a child born out of wedlock shall be severally liable for the support of the child, but the liability of the natural father shall not be enforceable unless he has been adjudicated to be the child's father by a court of competent jurisdiction, or he has acknowledged paternity of the child in open court or by written statement.

HISTORY: (Am.A. 1972 (64 G.A.), ch. 1027, § 31; A. 1973 (65 G.A.), ch. 140, § 33; A. 1973 (65 G.A.), ch. 190, § 2, eff. Aug. 15, 1973; A. 1976 (66 G.A.), ch. 1141, § 5.)

Cases

Construction and application.

Action seeking support of child born out of wedlock is an action in equity and the supreme court finds the facts anew; court gives weight to the findings of the trial court but is not bound by them. Foremen v. Wilcox, 1981, 305 N.W.2d 703.

An award of alimony is enforceable under the Iowa Uniform Support of Dependents Law. Op Atty.Gen. (Filseth), May 9, 1978.

Duties of support under provision of Uniform Reciprocal Enforcement of Support Act are those imposed by Iowa law generally. Engelson v. Mallea, 1970, 180 N.W.2d 127.

Provision of the Uniform Reciprocal Enforcement of Support Act that duties of support applicable are those imposed or imposable under laws of any State where respondent was present during period for which support is sought and that respondent is presumed to have been present in responding State during period for which support is sought until otherwise shown is essentially a conflict of laws rule; it specifies the law governing the duty to support; under such a provision duty to support is that imposed by law of State where respondent was during period for which support is sought. Id.

Where prior paternity action was brought in Minnesota, and putative father illegitimate child, and only objection that putative father made to that judgment was misnomer, which was untenable, that determination of parentage was res judicata in Minnesota where judgment was rendered and also in Iowa where mother brought action

under Uniform Support of Dependents Act against putative father, since judgment was entitled to full faith and credit in Iowa court. Id.

Where Iowa amended its Uniform Support of Dependents Act by adding substantial portions of the Uniform Reciprocal Enforcement of Support Act, duty of Iowa supreme court was to reconcile the various portions of uniform support law, as thus amended, and to endeavor to carry out beneficent purpose of that law as a whole. Id.

Where putative father of illegitimate child was sued in Minnesota and appeared and defended despite misspelling of his name, and where there was no evidence that Minnesota law differed from Iowa law with respect to misnomer, Minnesota paternity judgment was not invalid for misnomer for purposes of action in Iowa under Uniform Support of Dependents Act. Id.

Right of minor child to sue for support by next friend was not impaired by passage of Uniform Support of Dependents Law which provided, in part, that the statute should be construed to furnish an additional or alternative civil remedy and should in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to petitioner in relation to same subject matter. Gerk v. Gerk, 1966, 144 N.W.2d 104.

Suit by wife against husband under Uniform Support of Dependents Law for separate maintenance was, in fact, merely a suit by a wife for separate maintenance, and therefore rule of substantive law governing her right to separate maintenance were applicable. Peters v. Peters, 1957, 249 Iowa 110, 86 N.W.2d 206.

Parents liability.

Suit could be brought under the Uniform Support of Dependents Act to recover from putative father support for child born out of wedlock, even though the Department of Social Services might ultimately get the money pursuant to assignment by child's mother upon receipt of ADC, as child was suing to enforce his own right to support from his alleged father, as authorized by this section and as action could have been brought under that section by the governmental unit itself. Foreman v. Wilcox, 1981, 305 N.W.2d 703.

Obligation of an indebted natural parent and of an indebted stepparent living with family is to support rather than to support after payment of debts. Kelley v. Iowa Dept. of Social Services, 1972, 197 N.W.2d 192, app. dismissed 93 S.Ct. 170, 409 U.S. 813, 34 L.Ed.2d 69.

Where mother of illegitimate child obtained judgment in paternity action against putative father in action in Minnesota, and thereafter she brought action under Uniform Support of Dependents Act in Iowa against putative father and it was not established that father was not in Iowa during period for which support was asked, law governing putative father's duty to support was Iowa law. Engelson v. Mallea, 1970, 180 N.W.2d 127.

Parents of a minor child are liable for necessaries whether the child is under 18 years of age or between the ages of 18 and 21 years; if a child under 21 years of age reaches her majority by marriage and is divorced, the parents liability for her support terminates unless she is a dependent under chapter 252A, being "unable to maintain herself and is likely to become a public charge." Op.Atty.Gen (Gillman), Feb. 26, 1970.

Where a child because of weak body or mind is unable to care for itself upon attaining majority, exception exists to general rule that a parent's obligation ceases when child

becomes of age, and obligation to support such incapacitated child ceases only when necessity for the support ceases. Davis v. Davis, 1955, 246 Iowa 262, N.W.2d 566.

Thirty-year-old incapacitated son was entitled to support from his father notwithstanding his mother's admission she would not put him in public institution and she did not think he would live long enough to be public charge, where son had no means or income and was unable to work and mother's full time was required for his care. Id.

Father's duty to support adult incapacitated son was not impaired by father's remarriage or obligations father voluntarily assumed thereby for support of his second wife and their children. Id.

Amount.

The District Court, acting under Uniform Support of Dependents Law, has authority to determine, as court of responding State, amount of support which must be paid by one who is liable for support of another domiciled in another State, even though there is in effect a valid order of a court of a third State fixing an amount of support to be paid. Moore v. Moore, 1961, 252 Iowa 404, 107 N.W.2d 97.

Circumstances and means of both parents and also child should be considered in determining amount either should contribute to support of child. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Trial court's action, in proceeding under Uniform Support of Dependents Law, ordering father to pay $50 per month for support of adult incapacitated son, was proper, where father had good civil service job and substantial unencumbered property and mother had no property except small home which was mortgaged and spent full time caring for the child, notwithstanding both parents had remarried, and notwithstanding father's contention he was financially unable to contribute to son's support. Id.

Separate maintenance.

Prior dismissal of wife's petition for separate maintenance was res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependent Law, on issue of separate maintenance. Keefe v. Keefe, 1966, 143 N.W.2d 335.

Prior dismissal of wife's petition for separate maintenance was not res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of wife's right to support in the family home. Id.

Paternity.

In action under the Uniform Support of Dependents Law, evidence was sufficient to establish paternity. Foreman v. Wilcox, 1981, 305 N.W.2d 703.

In action seeking support for child born out of wedlock, burden of persuasion on issue of paternity is on petitioners, by a preponderance of the evidence, and the law does not require corroboration of the mother, though presence or absence of corroboration may influence the fact finder in the ultimate finding. Id.

By reason of presumption of legitimacy of children born in wedlock, father's admission of daughter's paternity in action by Department of Social Services for reimbursement of public support for amounts furnished his two children was binding as she

was born during the marriage. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342.

In State Department of Social Services' action under the Uniform Support of Dependent Law, § 252A.1 et seq., to recover from father for public assistance furnished his two children, evidence, including divorce decree with stipulation wherein father agreed to pay lump sum amount for the support of the minor children of the parties, established father's paternity of children, including child who was born before the marriage and child who was born after separation but prior to divorce. Id.

Since Missouri Uniform Reciprocal Enforcement of Support Act authorizes finding of duty of support, which may be any duty of support imposed or imposable by law, and since in Missouri father is liable for support of his illegitimate child, putative father of child owed a legal duty of support for child, despite fact that law of Iowa, where mother filed petition for support under Act prior to transfer to Missouri, provided that there should be no liability for support against putative father unless and until he is adjudicated to be child's father by court of competent jurisdiction. State of Iowa, ex rel., Nauman v. Troutman (Mo.App. 1981) 623 S.W.2d 269.

§ 252A.4. Jurisdiction.

For the purposes of this chapter:

1. The court shall have jurisdiction regardless of the State of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating State or the dependent person has ever been a resident of the responding State.

2. The court of the responding State shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

3. The courts of both the initiating State and the responding State shall have the power to order testimony to be taken in either or both of such State by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 4, eff. May 10, 1949.)

Cases

In general.

Where father was required to pay $35 each week prospectively until child born out of wedlock became 18 or was emancipated, mother had provided most of the support of the child for several years, and father earned good wages and could pay at least $50 per week, requiring payments toward past support as well as current support was consistent with the intent of the Uniform Support of Dependents Act and would be required. Foreman v. Wilcox, 1981, 305 N.W.2d 703.

Juvenile court has jurisdiction as to neglected, dependent or delinquent children under provisions of former § 232.25, giving jurisdiction to compel support by parents, and to act as initiating court pursuant to provisions of ch. 252A, the Uniform Reciprocal Enforcement of Support Act. Op.Atty.Gen., Aug. 23, 1963.

Municipal court of Ames, Iowa, acting as juvenile court, had jurisdiction under former § 232.25, giving court jurisdiction to compel parent to support neglected or dependent children, to enter orders requiring parents to support a neglected, dependent or delinquent child, and to act as the initiating court in such cases pursuant to the provisions of the Uniform Reciprocal Enforcement of Support Act. Id.

The District Court, acting under Uniform Support of Dependents Law, has authority to determine, as court of responding State, amount of support which must be paid by one who is liable for support of another domiciled in another State, even though there is in effect a valid order of a court of a third State fixing an amount of support to be paid. Moore v. Moore, 1961, 252 Iowa 404, 107 N.W.2d 97.

§ 252A.5. When Proceeding May Be Maintained.

A proceeding to compel support of a dependent may be maintained under this chapter in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in the same State.

2. Where the petitioner resides in one State and the respondent is a resident of or is domiciled or found in another State having substantially similar or reciprocal laws.

3. Where the respondent is not and never was a resident of or domiciled in the initiating State and the petitioner resides or is domiciled in such State and the respondent is believed to be a resident of or domiciled in another State having substantially similar or reciprocal laws.

4. Where the respondent was or is a resident of or domiciled in the initiating State and has departed or departs from such State leaving therein a dependent in need of and entitled to support under this chapter and is believed to be a resident of or domiciled in another State having substantially similar or reciprocal laws.

5. Whenever the State or a political subdivision thereof furnishes support to a dependent, it has the same right through proceedings instituted by the petitioner's representative to invoke the provisions hereof as the dependent to whom the support was furnished, for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support; the petition in such case may be verified by any official having knowledge of such expenditures and consent of the dependent shall not be required in order to institute proceedings under this chapter.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 5, eff. May 10, 1949; am.A. 1955 (56 G.A.), ch. 129, § 2.)

Cases

Construction and application.

Where father was required to pay $35 each week prospectively until child born out of wedlock became 18 or was emancipated, mother had provided most of the support for the child for several years, and father earned good wages and could pay at least $50 per week, requiring payments toward past support as well as current support was consistent with the intent of the Uniform Support of Dependents Act and would be required. Foreman v. Wilcox, 1981, 305 N.W.2d 703.

Rights of the State Department of Social Services for reimbursement from parents for public assistance furnished to children and for future support are identical with those of the children. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 1977, 255 N.W.2d 342.

Procedure for bringing action pursuant to this chapter is the same whether the action in intrastate or interstate and the rules of civil procedure as the acquiring of jurisdiction of the respondent by serving him notice of summons equally apply. Op.Atty.Gen., Sept. 12, 1967.

Proceedings under the Uniform Support of Dependents Law are available when respondent is adjudicated in paternity action as father of a child, and proceedings may be brought although a divorce petition has been filed, or before the commencement of a divorce action, or following a decree of divorce, and proceedings may be brought when the parties are residents of the same county in Iowa or different counties in Iowa. Op.Atty.Gen., July 10, 1967.

In a proceeding under this chapter, where both petitioner and respondent are residents of Iowa, petitioner must follow the Rules of Civil Procedure as in any other civil action and cannot employ the procedure provided where the parties reside in different States as enunciated in § 252A.6. Op.Atty.Gen., March 5, 1965.

Uniform Support of Dependents Law was applicable to proceeding for support brought by dependent against his father, notwithstanding both parties resided in-State and notwithstanding contention the Act was for use against absconding fathers. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Subd. 4 of this section which authorized proceeding to compel support from parent who has absconded was not intended to have effect of limiting applicability of entire Uniform Support of Dependents Law to cases wherein parent has absconded, and did not preclude applicability to case where parent and child were both residents. Id.

Separate maintenance.

Prior dismissal of wife's petition for separate maintenance was res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of separate maintenance. Keefe v. Keefe, 1966, 143 N.W.2d 335.

Prior dismissal of wife's petition for separate maintenance was not res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of wife's right to support in the family home. Id.

Intrastate proceedings.

Under the Uniform Support of Dependents Law, the words relating to the courts of the "initiating State" and "responding State" both refer to Iowa in intrastate proceeding. Op.Atty.Gen., Sept. 12, 1967.

§ 252A.6. How Commenced; Trial.

1. A proceeding under this chapter shall be commenced by a petitioner, or a petitioner's representative, by filing a verified petition in the court in equity in the county of the State wherein he or she resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he or she is in need of and is entitled to support from the respondent, giving the respondent's name, age, residence and circumstances and praying that the respondent be compelled to furnish such support. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his or her person, other names and aliases by which he or she has been or is known, the name of his or her employer, his or her fingerprints, or Social Security Number.

2. If the respondent be a resident of or domiciled in such State and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such State, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the respondent or his or her property, it shall so certify and shall cause three copies of (a) the petition, (b) its certificate, and (c) this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

4. When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall docket the case, notify the county attorney or other official acting as petitioner's representative, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this State to serve notice and thus obtain jurisdiction over the respondent. If a court of the State, acting as a responding State, is unable to obtain jurisdiction of the respondent or his or her property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the respondent or his or her property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State.

5. It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding State to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating State a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating State of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding State an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding State shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding State, willfully fails without good cause to appear as directed in the summons, he or she shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified in the summons and fails to answer the petition or admits the allegations of the petition, or if, after a hearing has been duly held by the court in the responding State in accordance with this section, the court has found and determined that the prayer of the petitioner, or any part of the prayer, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay a sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of the order shall be transmitted by the court to the court in the initiating State and the copy shall be filed with and made a part of the records of the court in the proceeding. Upon entry of an order for support or upon failure of a person to make payments pursuant to an order for support, the court may require the respondent to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the support. Upon the respondent's failure to pay the support under the order, the court may declare the security, bond, or other guarantee forfeited.

12. The court making such order may require the respondent to make payment at specified intervals to the clerk of the District Court, or to the dependent, or to any State or county agency, and to report personally to the sheriff or any of the official, at such times as may be deemed necessary.

13. A respondent who shall willfully fail to comply with or violate the terms or conditions of the support order or of his or her probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such

court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court: Upon receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and upon request to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

15. Any order of support issued by a court of the State acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

16. The court of the initiating State shall receive and accept all payments made by the respondent to the Probation Department or Bureau of the Court of the responding State and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating State may prescribe, the court, or its Probation Department or Bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 6, eff. May 10, 1949; am.A. 1955 (56 G.A.), ch. 129, §§ 3-10; A. 1973 (65 G.A.), ch. 190, § 3, eff. Aug. 15, 1973; A. 1976 (66 G.A.), ch. 1141, § 6; A. 1985 (71 G.A.), ch. 100, § 1.)

Cases

Construction and application.

Two-year statute of limitations provided in § 675.33 for paternity actions under more traditional statutory procedure denies rights of illegitimate children to equal protection in light of fact that alternative paternity procedure under Uniform Support of Dependents Law is subject to no statute of limitations during child's minority. State ex rel. Rake v. Ohden, 346 N.W.2d 826 (Iowa, 1984).

Where action against father of three minor children seeking reimbursement for public assistance already furnished, and continuing support, was initiated by Department of Social Services, it was not required to prove circumstances underlying prior amount in dissolution decree, nor any change in circumstances. State, Iowa Dept. of Social Services ex rel. Blakeman v. Blakeman, 337 N.W.2d 199 (Iowa, 1983).

Department of Social Services erroneously brought action, in which it sought reimbursement from father for public assistance already furnished to children and continuing support, on behalf of children's mother as petitioner, but such was a nonfatal error correctable on remand by substituting names of children. Id.

Where wife, in bringing action for separate maintenance, for some reason adopted procedure under Uniform Support of Dependents Law, she could not discard such procedure in part, and her attorney's fees were not a necessary part of her support or necessary to enable her to prosecute the action, since the Uniform Support of Dependents Law contemplates that proceedings shall be conducted by public officers without expense to petitioners for attorney's fees. Peters v. Peters, 1957, 249 Iowa 110, 86 N.W.2d 206.

Under provision of this section that if respondent be resident in State in which proceeding is commenced and court can acquire jurisdiction of his person under existing laws in effect in such State, such law shall govern and control procedure to be followed in such proceeding, "such proceeding" means proceeding commenced under act by petitioner in court; words "existing laws in effect in such State" refer to laws under which court can acquire jurisdiction, and words "such laws" refer to "existing laws," notwithstanding contention existing laws of State should govern entire proceeding. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

In a proceeding under this chapter, where both petitioner and respondent are residents of Iowa, petitioner must follow the Rules of Civil Procedure as in any other civil action and cannot employ the procedure provided where the parties reside in different State as enunciated in this section. Op.Atty.Gen., March 5, 1965.

Instituting proceedings.

In State's action on behalf of mother receiving public assistance for determination of paternity and award of support which was improperly brought in name of the child's mother, trial court properly permitted, as an alternative to dismissal, petition to be amended so as to name the minor child as a petitioner. State ex rel. Warren v. Mahan, 329 N.W.2d 673 (Iowa, 1983).

State's action on behalf of mother receiving public assistance for determination of paternity and award of support was improperly brought in name of the child's mother, its custodial parent, rather than in name of the child whose support was at issue. Id.

Supreme court will take judicial notice of the ordinary period of gestation in a paternity proceeding. Moody v. Christiansen, 306, N.W.2d 775 (Iowa, 1981).

Paternity may be established in a proceeding under the Uniform Support of Dependents Act. Id.

Under Iowa procedure, there is no right to trial by jury in special proceedings. Greenstreet v. Clark, 239 N.W.2d 143 (Iowa, 1976).

Legislature, by enacting Uniform Support of Dependents Law, mandated that proceeding under such law be commenced by filing verified petition in equity. Id.

Paternity proceeding under the Uniform Support of Dependents Act was not barred by the equitable doctrine of laches, despite fact that no action was brought until more than six years after the birth of the child, as alleged father failed to show that any witness was absent or had any difficulty recalling events because of the delay. Moody v. Christiansen, 306 N.W.2d 775 (Iowa, 1981).

Fact that paternity proceeding under the Uniform Support of Dependents Act was not brought within five-year period provided for in general statute of limitations did not bar the proceeding. Id.

Provision of § 252A.2(7) which makes it duty of county attorney to appear for a petitioner does not prohibit institution of such proceeding by a practicing attorney of petitioner's choice. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Procedure for bringing action pursuant to this chapter is the same whether the action is intrastate or interstate and the rules of civil procedure as to acquiring of jurisdiction of the respondent by serving him notice of summons equally apply. Op.Atty.Gen., Sept. 12, 1967.

Proceedings under the Uniform Support of Dependents Law are available when respondent is adjudicated in paternity action as father of a child, and proceedings may be brought although a divorce petition has been filed, or before the commencement of a divorce action, or following a decree of divorce, and proceedings may be brought when the parties are residents of the same county in Iowa or different counties in Iowa. Op.Atty.Gen., July 10, 1967.

Evidence.

Evidence in paternity proceeding under the Uniform Support of Dependents Act, including undisputed testimony by mother that she had sexual relationship with alleged father during period in which pregnancy was confirmed, that she engaged in intercourse with no person other than alleged father and that the child's facial features resembled alleged father was sufficient to establish paternity. Moody v. Christiansen, 306 N.W.2d 775 (Iowa, 1981).

Judgment and order.

In de novo review of action under Uniform Support of Dependents Law, court of appeals gives weight to fact findings of trial court, especially when considering credibility of witnesses, but it is not bound by them. State ex rel. Hodges v. Fitzpatrick, 342 N.W.2d 870 (Iowa App., 1983)

Fact that former wife had, following dissolution, assigned child support to Department of Social Services as a condition for receipt of aid to dependent children did not preclude her from seeking increased child support payments. In re Marriage of Stutsman, 311 N.W.2d 73 (Iowa, 1981).

Protection of former husband, under real party in interest rule, as to past child support payments following former wife's assignment of child support to Department of Social Services as condition for receipt of aid to dependent children did not require conclusion that former wife was foreclosed under real party in interest rule from seeking larger future payment, where dissolution decree complied with statute requiring payments to be made to clerk of court and the clerk of court was statutorily required to forward assigned payments to Department of Social Services. Id.

Review by the Supreme Court of a proceeding to adjudicate paternity under the Uniform Support of Dependents Act is de novo. Moody v. Christiansen, 306 N.W.2d 775, (Iowa, 1981).

In order to obtain an increase in amount of child support under a divorce decree providing for periodic support or a lump sum decree with adequate safeguards, the Department of Social Services, standing in the shoes of the children, would be required to show a substantial change of circumstances since the date of the original decree and it would further be required to show such change was not within contemplation of trial court when the earlier decree was entered. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 255 N.W.2d 342 (Iowa, 1977).

Review of equitable action for reimbursement of public support is de novo; findings of trial court are given weight but are not binding. State, Dept. of Social Services, Cedar County ex rel. Brecht v. Brecht, 255 N.W.2d 342 (Iowa, 1977).

Trial court did not err in providing that its judgment, whereby it ordered father to pay $50 per month to adult incapacitated son in proceeding under Uniform Support of Dependents Law, was a lien upon real estate now or hereafter owned by the father, even though such real estate included father's homestead in which resided his second wife and their child. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Jurisdiction.

Trial court was not without subject-matter jurisdiction in paternity proceeding initially brought in the name of the mother, as the child was later substituted in the suit as petitioner, and as trial court later granted alleged father's motion for summary judgment against mother, so that the action proceeded on the child's petition. Moody v. Christiansen, 306 N.W.2d 775 (Iowa, 1981).

It did not lie within authority of Iowa court, as court of responding State in proceeding brought under Uniform Support of Dependents Law, to adjudicate nonpaternity on basis of alleged violation of civil procedural rule providing that by failing to deny matters of fact requested within 30 days, each of those matters of fact are deemed admitted. State of Colo., Jefferson County, ex rel. Graham v. Brammer, 301 N.W.2d 715, (Iowa, 1981).

Under Uniform Support of Dependents Law, where a paper, which was not signed by petitioner or her attorney, and which notified father that petition was on file and would come on for hearing in seven days, was issued by court and served upon the father, the summary notice failed to meet requirements of Iowa Rules of Civil Procedure, Rule 50, and was insufficient to give to the court personal jurisdiction over the father. Moore v. Moore, 1961, 252 Iowa 404, 107 N.W.2d 97.

The District Court, acting under Uniform Support of Dependents Law, has authority to determine, as court of responding State, amount of support which must be paid by one who is liable for support of another domiciled in another State, even, though there is in effect a valid order of a court of a third State fixing an amount of support to be paid. Id.

Separate maintenance.

Prior dismissal of wife's petition for separate maintenance was res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of separate maintenance. Keefe v. Keefe, 1966, 143 N.W.2d 335.

Prior dismissal of wife's petition for separate maintenance was not res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of wife's right to support in the family home. Id.

Intrastate proceedings.

Under the Uniform Support of Dependents Law, the words relating to the courts of the "initiating State" and "responding State" both refer to Iowa in intrastate proceedings. Op.Atty.Gen., Sept. 12, 1967.

Jury questions.

Legislature acted within its authority, under rational basis test of equal protection law, in concluding that jury trial might be allowed for a traditional paternity action and yet denied for a paternity question in a proceeding under this chapter. State ex rel. Bishop v. Travis, 306 N.W.2d 733 app. dismissed 102 S.Ct. 560, 454 U.S. 1026, 70 L.Ed.2d 470.

Defendant in Uniform Support of Dependents Law proceedings was not entitled to have question raised by his denial of paternity determined as issue at law by jury. Greenstreet v. Clark, 239 N.W.2d 143 (Iowa, 1976).

Amount of award.

Court in proceeding under Uniform Support of Dependents Law may award more or less support than dissolution court. State, Iowa Dept. of Social Services ex rel. Blakeman v. Blakeman, 337 N.W.2d 199 (Iowa, 1983).

Record, including proof that father was earning approximately $26,000 per year and paying about $3,900 per year to support three school age children still in home, was single and had no other dependents, his debts, with exception of house mortgage, were minimal, and State supported his children to extent of $5,674.47 in 1981 and at an annual rate of $7,038.20 in 1982, supported an award of $35 per week for support of each child until he or she would attain age of 18; such payments would more than fulfill his support payment obligation under dissolution decree, when also credited there pursuant to section of Uniform Support of Dependents Law. Id.

§ 252A.7. Petitioner's Representatives To Appear.

It shall be the duty of all petitioner's representatives of this State to appear in this State on behalf of and represent the petitioner in every proceeding pursuant to this chapter, at the time the petition is filed and at al stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating State or the responding State.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 7, eff. May 10, 1949.)

§ 252A.8. Additional Remedies.

This chapter shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 8, eff. May 10, 1949.)

Cases

Construction and application.

Fact that former wife had, following dissolution, assigned child support to Department of Social Services as a condition for receipt of aid to dependent children did

not preclude her from seeking increased child support payments. In re Marriage of Stutsman, 1981, 311 N.W.2d 73.

Protection of former husband, under real party in interest rule, as to past child support payments following former wife's assignment of child support to Department of Social Services as condition for receipt of aid to dependent children did not require conclusion that former wife was foreclosed under real party in interest rule from seeking larger future payment, where dissolution decree complied with statute requiring payments to be made to clerk of court and the clerk of court was statutorily required to forward assigned payments to Department of Social Services. Id.

No order for support issued by responding State under Uniform Support of Dependents Law will supercede any other order for support. State of Colo., Jefferson County, ex rel. Graham v. Brammer, 1981, 301 N.W.2d 715.

State was not precluded from exercising jurisdiction in paternity action over nonresident putative father of child born to State resident on theory that Uniform Support of Dependents Law provided procedure to determine custody in which neither party was required to leave his or her own State where neither State paternity law nor Uniform Support of Dependents Law was exclusive and long-distance resolution of paternity issues without aid of direct confrontation had potential weaknesses. Larsen v. School, 1980, 296 N.W.2d 785.

The District Court, acting under Uniform Support of Dependents Law, has authority to determine, as court of responding State, amount of support which must be paid by one who is liable for support of another domiciled in another State, even though there is in effect a valid order of a court of a third State fixing an amount of support to be paid. Moore v. Moore, 1961, 252 Iowa 404, 107 N.W.2d 97.

§ 252.1 et seq., did not provide exclusive remedy even in cases where parent and child were both residents of State. Davis v. Davis, 1955, 246 Iowa 262, 67 N.W.2d 566.

Separate maintenance.

Prior dismissal of wife's petition for separate maintenance was res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of separate maintenance. Keefe v. Keefe, 1966, 143 N.W.2d 335.

Prior dismissal of wife's petition for separate maintenance was res judicata, in subsequent proceeding by wife against husband for support under Uniform Support of Dependents Law, on issue of wife's right to support in the family home. Id.

Actions and proceedings.

Proceedings under the Uniform Support of Dependents Law are available when respondent is adjudicated in paternity action as father of a child, and proceedings may be brought although a divorce petition has been filed, or before the commencement of a divorce action, or following a decree of divorce, and proceedings may be brought when the parties are residents of the same county in Iowa or different counties in Iowa. Op.Atty.Gen., July 10, 1967.

§ 252A.9. Construction.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the States which enact it.

HISTORY: (A. 1949 (53 G.A.), ch. 103, § 9, eff. May 10, 1949.)

§ 252A.10. Costs Advanced.

Actual costs incurred in this State incidental to any action brought under the provisions of this chapter shall be advanced by the initiating party or agency unless otherwise ordered by the court. Where the action is brought by an agency of the State or county there shall be no filing fee.

HISTORY: (A. 1955 (56 G.A.), ch. 129, § 11.)

Cases

Construction and application.

Cost to be advanced may be deferred within discretion of court upon proper application. Op.Atty.Gen., March 18, 1959.

Sheriff's mileage and costs may be deferred by order of court, and application thereof should be made to court at time of filing case. Id.

Where putative father filed his notice of appeal before trial court had fixed amount of the child support obligation as requested by State's petition, order which found putative father in default for failure to pay for blood test and to be the father of child was not a final judgment. State ex rel. Parcel v. St. John, 1981, 308 N.W.2d 8.

§ 252A.11. Custody of Respondent.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction it may as an initiating State request in its certificate that the court of the responding State obtain the body of the respondent by appropriate process if that be permissible under the law of the responding State; or, it may as responding State, obtain the body of the respondent by appropriate process.

HISTORY: (A. 1955 (56 G.A.), ch. 129, § 12.)

§ 252A.12. Exchange Lists of Courts.

The State Division of Child and Family Services of the Department of Human Services is hereby designated as the State Information Agency under this chapter, and it shall be its duty to compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the State Information Agency of

every other State which has adopted this or a substantially similar act and to maintain a register of such lists received from other States.

HISTORY: (A. 1955 (56 G.A.), ch. 129, § 13; A. 1967 (62 G.A.), ch. 209, § 428, eff. Aug. 15, 1967; A. 1983 (70 G.A.), ch. 96, § 157, eff. July 1, 1983.)

§ 252A.13. Recipients of Public Assistance; Assignment of Support Payments.

A person entitled to periodic support payments pursuant to an order or judgment entered in a uniform support action under this chapter, who is also a recipient of public assistance, is deemed to have assigned the person's rights to the support payments, to the extent of public assistance received by the person, to the Department of Human Services. The department shall immediately notify the clerk of court by mail when a person entitled to support payments has been determined to be eligible for public assistance. Upon notification by the department that a person entitled to periodic support payments pursuant to this chapter is receiving public assistance, the clerk of court shall make a notation of the automatic assignment in the judgment docket and lien index. The notation constitutes constructive notice of the assignment. The clerk of court shall forward support payments received pursuant to § 252A.6, to which the department is entitled, to the department, unless the court has ordered the payments made directly to the department under subsection 12 of that section. The department may secure support payments in default through proceedings prescribed in this chapter. The clerk shall furnish the department with copies of all orders or decrees awarding support to parties having custody of minor children when the parties are receiving public assistance.

HISTORY: (A. 1975 (66 G.A.), ch. 151, § 11, eff. Aug. 15, 1975; A. 1982 (69 G.A.), ch. 1237, § 2; A. 1983 (70 G.A.), ch. 96, § 157, eff. July 1, 1983.)

Cases

In general.

Because a paternity proceeding against a putative father when a mother applies for aid to dependent children is and must be brought to recoup funds for the State it is "State action" for purposes of the due process clause, and a paternity defendant must be afforded due process. State ex rel. Hamilton v. Snodgrass, 1982, 325 N.W.2d 740.

There is no equal protection violation in the State's providing counsel in a paternity proceeding to a mother who applies for ADC benefits while denying counsel at public expense to the indigent putative father. Id.

An indigent defendant in a paternity proceeding required by Federal law to be commenced when a mother applies for ADC benefits has no constitutional right to counsel at public expense. Id.

Fact that former wife had, following dissolution, assigned child support to Department of Social Services as a condition for receipt of aid to dependent children did not preclude her from seeking increased child support payments. In re Marriage of Stutsman, 1981, 311 N.W.2d 73.

Protection of former husband, under real party in interest rule, as to past child support payments following former wife's assignment of child support to Department of Social Services as condition for receipt of aid to dependent children did not require

conclusion that former wife was foreclosed under real party in interest rule from seeking larger future payment, where dissolution decree complied with statute requiring payments to be made to clerk of court and the clerk of court was statutorily required to forward assigned payments to Department of Social Services. Id.

§ 252A.16. Additional Remedies for Foreign Support Orders.

If the duty of support is based on a support order entered in a foreign jurisdiction the petitioner has the additional remedies provided in §§ 252A.17 to 252A.19.

HISTORY: (A. 1982 (69 G.A.), ch. 1004, § 2.)

§ 252A.17. Registry of Foreign Support Orders.

The petitioner may register the foreign support order in a court of this State in the manner and with the effect provided in §§ 252A.18 and 252A.19. The clerk of the court shall maintain a Registry of Foreign Support Orders in which foreign support orders shall be filed. The filing is in equity.

HISTORY: (A. 1982 (69 G.A.), ch. 1004, § 3.)

§ 252A.18. Registration Procedure for Foreign Support Orders; Notice.

1. A petitioner seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court three certified copies of the order reflecting all modifications, one copy of the reciprocal enforcement of support act of the State in which the order was made, and a statement verified and signed by the petitioner, showing the post office address of the petitioner, the last known place of residence and post office address of the respondent, the amount of support remaining unpaid, a description and the location of any property of the respondent available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, with payment of a filing fee of six dollars, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

2. Promptly upon registration, the clerk of the court shall send by restricted certified mail to the respondent at the address given a notice of the registration with a copy of the registered support order and the post office address of the petitioner, or the petitioner may request that the respondent be personally served with the notice and the copy of the order in the same manner as original notices are personally served. The clerk shall also docket the case and notify the prosecuting attorney of the action.

HISTORY: (A. 1982 (69 G.A.), ch. 1004, § 4.)

§ 252A.19. Enforcement Procedure for Registered Foreign Support Orders.

1. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. The order shall have the

same effect and shall be subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

2. The respondent shall have twenty days after receiving notice of the registration in which to petition the court to vacate the registration or for other relief. If the respondent does not so petition, the respondent is in default and the registered support order is confirmed.

3. At the hearing to enforce the registered support order the respondent may present only matters that would be available to the respondent as defenses in an action to enforce a foreign money judgment. However, the court in its discretion may consider the income and resources of the respondent, the respondent's ability to pay, and any material changes of circumstances since the granting of registered support order, and may modify the amount of the support in the same manner as other support orders are modified. If the respondent States to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support as ordered by the court. If the respondent shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (A. 1982 (69 G.A.), ch. 1004, § 5.)

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§ 23-451. Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (L. 1970, ch. 132, § 1; July 1.)

Cases

Determination of duty to support is made by responding State not initiating State; method of proof discussed. Mossburg v. Coffman, 629 P.2d 745 (Kan.App., 1981).

Mentioned; not applicable to petition for reduction of support payments granted in another State. Dipman v. Dipman, 635 P.2d 1279 (Kan.App., 1981).

Cited; obligor cannot assert counterclaim in proceeding under 60-3001 et seq. to enforce support order. Landon v. Artz, 631 P.2d 1237 (Kan.App., 1981).

Noted in action for past due child support payments distinguished from action under this statute. Hicks v. Hefner, 210 K. 79, 84, 499 P.2d 1147.

Only purpose of Act to provide expeditious way for enforcing duties without involvement an collateral issues. Thompson v. Kite, 214 K. 700, 703, 522 P.2d 327.

Judge in responding State without jurisdiction to condition disbursement of payments on visitation rights. Patterson v. Patterson, 2 K.A.2d 447, 581 P.2d 824.

Noted in action upholding jurisdiction of trail court to enforce defaulting parent's common law duty of child support. Keller v. Guernsey, 227 K. 480, 485, 487, 488, 608 P.2d 896.

§ 23-452. Definitions.

(a) "COURT" means the District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, annulment, adoption or custody and includes the duty to pay arrearages of support past due and unpaid from the date of the order of support entered in the responding State.

(c) "GOVERNOR" includes any person performing the functions of the Governor or the executive authority of any State covered by this Act.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgement, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1970, ch. 132, § 2; July 1.)

§ 23-453. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1970, ch. 132, § 3, July 1.)

Cases

Applied; purpose of 23-451 and 23-481 construed; action for injunctive relief in responding court dismissed. Thompson v. Kite, 214 K. 700, 703, 522 P.2d 327.

Applied; judge in responding State without jurisdiction to condition disbursement of payments on visitation rights. Patterson v. Patterson, 2 K.A.2d 447, 448, 581 P.2d 824.

Noted in action upholding jurisdiction of trial court to enforce defaulting parent's common law duty of child support. Keller v. Guernsey, 227 K. 480, 487, 608 P.2d 896.

§ 23-454. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under Kan.Stat.Ann. 23-457, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (L. 1970, ch. 132, § 4; July 1.)

Cases

Noted in action upholding jurisdiction of trial court to enforce defaulting parent's common law duty of child support. Keller v. Guernsey, 227 K. 480, 487, 608 P.2d 896.

§ 23-455. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1970, ch. 132, § 5, July 1.)

§ 23-456. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1970, ch. 132, § 6; July 1.)

§ 23-457. Choice of Law.

Duties of support applicable under this Act are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1970, ch. 132, § 7, July 1.)

§ 23-458. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1970, ch. 132, § 8, July 1.)

§ 23-459. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (L. 1970, ch. 132, § 9; July 1.)

§ 23-460. Jurisdiction.

Jurisdiction of any proceeding under this Act is vested in the District Court of the county in which the obligor or obligee resides.

HISTORY: (L. 1970, ch. 132, § 10; July 1.)

§ 23-461. Contents and Filing of Petition for Support; Venue.

(a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include on or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on

his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1970, ch. 132, § 11; July 1.)

Cases

Applied; purpose of 23-451 and 23-481 construed; action for injunctive relief in responding court dismissed. Thompson v. Kite, 214 K. 700, 703, 522 P.2d 327.

§ 23-462. Officials To Represent Obligee.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court or the State Department of Social Welfare shall represent the obligee in any proceeding under this Act. If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1970, ch. 132, § 12; July 1.)

§ 23-463. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1970, ch. 132, § 13, July 1.)

§ 23-464. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this Act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY (L. 1970, ch. 132, § 14, July 1.)

§ 23-465. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1970, ch. 132, § 15; July 1.)

§ 23-466. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1970, ch. 132, § 16, July 1.)

§ 23-467. State Information Agency.

(a) The Secretary of Social and Rehabilitation Services is designated as the State Information Agency under this Act. He shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such office are able to cooperate, and

requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of three copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the Attorney General, who may undertake the representation.

HISTORY: (L. 1970, ch. 132, § 17; July 1.)

§ 23-468. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1970, ch. 132, § 19, July 1.)

§ 23-470. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1970, ch. 132, § 20, July 1.)

Cases

Determination of duty to support is made by responding State, not initiating State; methods of proof discussed. Mossburg v. Coffman, 629 P.2d 745 (Kan.App., 1981).

§ 23-471. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1970, ch. 132, § 21, July 1.)

§ 23-472. Rules of Evidence.

Any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (Kan.Stat.Ann. 23-476) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1970, ch. 132, § 22; July 1.)

§ 23-473. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1970, ch. 132, § 23, July 1.)

Cases

Applied; judge in responding State without jurisdiction to condition disbursement of payments on visitation rights. Patterson v. Patterson, 2 K.A.2d 447, 448, 581 P.2d 824.

§ 23-474. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (L. 1970, ch. 132, § 24, July 1.)

§ 23-475. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (L. 1970, ch. 132, § 25; July 1.)

§ 23-476. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1970, ch. 132, § 26; July 1.)

Cases

Remedy hereunder referred to in a paternity proceeding; no jurisdiction under long arm statute (60-308). State, ex rel., v. Schutts, 217 K. 175, 181, 535 P.2d 982.

§ 23-477. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (L. 1970, ch. 132, § 27; July 1.)

§ 23-478. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (L. 1970, ch. 132, § 28, July 1.)

§ 23-479. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall

hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1970, ch. 132, § 29; July 1.)

§ 23-480. Application of Payments.

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1970, ch. 132, § 30; July 1.)

§ 23-481. Effect of Participation in Proceeding.

Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (L. 1970, ch. 132, § 31, July 1.)

Cases

Construed and applied.

Purpose was to preclude collateral litigation in responding court; action for injunctive relief dismissed. Thompson v. Kite, 214 K. 700, 702, 703, 522 P.2d 327.

§ 23-482. Intrastate Application.

This act applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which

the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (L. 1970, ch. 132, § 32; July 1.)

§ 23-483. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (L. 1970, ch. 132, § 33; July 1.)

§ 23-484. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (L. 1970, ch. 132, § 34, July 1.)

Cases

Determination of duty to support is made by responding State, not initiating State; methods of proof discussed. Mossburg v. Coffman, 629 P.2d 745 (Kan.App., 1981).

§ 23-485. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1970, ch. 132, § 35; July 1.)

§ 23-486. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the county attorney upon the request of the court or the State Department of Social Welfare shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1970, ch. 132, § 36; July 1.)

§ 23-487. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court

(1) Three certified copies of the order with all modifications thereof,

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this Act.

(b) Promptly upon registration, the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1970, ch. 132, § 37, July 1.)

Cases

Registration of enforceable foreign judgment creates new and additional five years to execute. Warner v. Warner, 668 P.2d 193 (Kan.App., 1983).

§ 23-488. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1970, ch. 132, § 38; July 1.)

§ 23-489. Uniformity of Interpretation.

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1970, ch. 132, § 39; July 1.)

§ 23-490. Short Title.

This Act may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

HISTORY: (L. 1970, ch. 132, § 40, July 1.)

§ 23-491. Severability.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

HISTORY: (L. 1970, ch. 132, § 41; July 1.)

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§ 407.010. Short Title; Purpose.

(1) This chapter may be cited and referred to as the "Uniform Reciprocal Enforcement of Support Act."

(2) The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the laws with respect thereto.

HISTORY: (Enact.A. 1950, ch. 66, § 1; 1954, ch. 190, § 1; 1972, ch. 158, § 1.)

Cases

Ky.Rev.Stat. chs. 406 and 407 are not incompatible since ch. 406 provides a means for identifying the biological parents, while ch. 407 provides the locomotion operandi for enforcing an award of child support. Locke v. Zollicoffer, 608 S.W.2d 54 (Ky., 1980).

§ 407.100. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(4) "COURT" means the circuit or District Court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support is commenced.

(8) "OBLIGEE" means any person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(9) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(10) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

(11) "REGISTER" means to file in the Registry of Foreign Support Orders.

(12) "REGISTERING COURT" means the circuit or District Court of this State.

(13) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

HISTORY: (Enact.A. 1954, ch. 190, § 2; 1972, ch. 158, § 2; 1976 (Ex.Sess.), ch. 14, § 413, eff. January 2, 1978; 1978, ch. 402, § 1, eff. June 17, 1978.)

§ 407.110. Remedies Additional to Others.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (Enact.A. 1954, ch. 190, § 3, eff. July 1, 1954.)

Cases

Under this section the petitioning spouse is given a choice of remedies, not an accumulation of such; accordingly, the Uniform Reciprocal Enforcement of Support Act (URESA) merely presented mother with the choice of whether she wished to proceed in Indiana, or Kentucky and, having chosen Indiana, she could not be heard to complain that the decision there was adverse to her claim and could not subsequently bring common-law action in Kentucky for same arrearages which were denied by Indiana court. Jaynes v. Black, 655 S.W.2d 493 (Ky.Ct.App., 1983).

§ 407.120. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under Ky.Rev.Stat. 407.150, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (Enact.A. 1954, ch. 190, § 4, eff. July 1, 1954.)

§ 407.130. Interstate Rendition.

The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (Enact.A. 1954, ch. 190, § 5, eff. July 1, 1954.)

§ 407.140. Repealed.

§ 407.150. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Enact.A. 1954, ch. 190, § 7, eff. July 1, 1954.)

§ 407.160. Remedies of a State or Political Subdivision Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (Enact.A. 1954, ch. 190, § 8, eff. July 1, 1954).

§ 407.170. Enforcement of Duties; Jurisdiction of Proceedings.

All duties of support, including the duty to pay arrearages, are enforceable by action under this chapter including a proceeding for contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent child is not available to the obligor. Jurisdiction of all proceeding hereunder shall be vested in the circuit or District Court.

HISTORY: (Enact.A. 1954, ch. 190, § 9; 1972, ch. 158, § 4; 1976 (Ex.Sess.), ch. 14, § 414, eff. January 2, 1978.)

§ 407.180. Verifications and Contents of Complaint for Support; Location for Filing Complaint.

(1) The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the addresses and circumstances of the defendant, his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of this person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

(2) The complaint may be filed in the appropriate court of any State in which the obligee resides or if the obligee is a resident of a military reservation within the Commonwealth of Kentucky, the complaint may be filed in the appropriate court in the county adjacent to said military reservation with the largest population. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (Enact.A. 1954, ch. 190, § 10; 1972, ch. 158, § 5; 1976, ch. 365, § 1.)

§ 407.190. Representation by County Attorney; Refusal; Secretary for Human Resources May Employ Private Counsel.

If this State is acting as an initiating State, the county attorney, upon the request of the court or an appropriate welfare official or State agency, shall represent the plaintiff in any proceeding under this chapter. If the county attorney neglects or refuses to represent the plaintiff, the Secretary for Human Resources or his authorized representative may employ private counsel to represent the obligee.

HISTORY: (Enact.A. 1954, ch. 190, § 11; 1972, ch. 158, § 6; 1974, ch. 74, Art VI, § 107(19).)

Cases

Actions prosecuted in another county.

A prosecutor from one county in a multicounty judicial district could bring an action pursuant to Ky.Rev.Stat. 406.021 to determine the paternity of children from another county in the same judicial district, since paternity actions may be brought by and prosecuted by the mother, child, person or agency substantially contributing to the support of the child, through an attorney of their choosing, with the county attorney only entering the case when requested to do so by the complainant, and because, in this case, the Department of Human Resources contracted with the county attorney to represent the complainant pursuant to this section and subsection (3) of Ky.Rev.Stat. 407.250. Commonwealth ex rel. Stumbo v. Wilson, 622 S.W.2d 912 (Ky. 1981).

§ 407.200. Complaint For a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (Enact.A. 1954, ch. 190, § 12, eff. July 1, 1954).

§ 407.210. Duty of Court of this State as Initiating State.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three (3) copies of the complaint, its certificate, and this chapter to be transmitted to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (Enact.A. 1954, ch. 190, § 13; 1972, ch. 158, § 7.)

§ 407.220. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor. The costs or fees do not have priority over amounts due to the obligee.

HISTORY: (Enact.A. 1954, ch. 190, § 14; 1972, ch. 158, § 8.)

§ 407.230. Arrest of Defendant.

When the court of this State, acting either as an initiating or responding court, has reason to believe that the defendant may flee the jurisdiction it may as an initiating court request in its certificate that the responding court obtain the body of the defendant by appropriate process; or as a responding court, obtain the body of the defendant by appropriate process.

HISTORY: (Enact.A. 1954, ch. 190, § 15; 1972, ch. 158, § 9.)

§ 407.240. State Information Agency.

(1) The Department for Human Resources is hereby designated as the State Information Agency under this chapter, and it shall be its duty:

(a) To compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other State Information Agencies;

(b) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter;

(c) To forward to the court in this State which has jurisdiction over the obligor or his property, petitions, certificates and copies of the act it received from courts or information agencies of other States.

(2) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(3) After the deposit of three (3) copies of the complaint and certificate and one (1) copy of the act of the initiating court with the clerk of the appropriate court, if the State Information Agency knows or believes that the county attorney is not prosecuting the case diligently, and a reasonable period of time since the deposit of the complaint has lapsed, it shall send an inquiry to the county attorney to determine why the case is not prosecuted diligently. If the county attorney fails to respond to the inquiry, fails to give sufficient reason why he has not prosecuted the case diligently or refuses to proceed in prosecution of the case, the Secretary for Human Resources or his authorized representative may employ private counsel to represent the obligee.

HISTORY: (Enact.A. 1954, ch. 190, § 16; 1972, ch. 158, § 10; 1974, ch. 74, art. VI, § 107(19).)

§ 407.250. Duty of Court of this State as Responding Court; Secretary for Human Resources May Employ Counsel for Obligee.

(1) When the court of this State, acting as a responding court, receives from the initiating court the aforesaid copies, it shall docket the case, notify the county attorney, set a time and place for a hearing, and take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

(2) The county attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court clerk to set a time and place for a hearing and give notice thereof to the obligor in accordance with the law.

(3) If the county attorney neglects or refuses to represent the obligee, the Secretary for Human Resources or his authorized representative may employ private counsel to represent the obligee.

HISTORY: (Enact.A. 1954, ch. 190, § 17; 1972, ch. 158, § 11; 1974, ch. 74, art. VI, § 107(19).)

Cases

A prosecutor from one county in a multicounty judicial district could bring an action pursuant to Ky.Rev.Stat. 406.021 to determine the paternity of children from another county in the same judicial district, since paternity actions may be brought by and prosecuted by the mother, child, person or agency substantially contributing to the support of the child, through an attorney of their choosing, with the county attorney only entering the case when requested to do so by the complainant, and because, in this case, the Department of Human Resources contracted with the county attorney to represent the complainant pursuant to Ky.Rev.Stat. 407.190 and subsection (3) of this section. Commonwealth ex rel. Stumbo v. Wilson, 622 S.W.2d 912 (Ky., 1981).

§ 407.260. Duty When Court Unable To Obtain Jurisdiction.

If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating State.

HISTORY: (Enact.A. 1954, ch. 190, § 18, eff. July 1, 1954.)

§ 407.270. Conduct of Proceedings.

The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

HISTORY: (Enact.A. 1954, ch. 190, § 19, eff. July 1, 1954.)

§ 407.280. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (Enact.A. 1954, ch. 190, § 20, eff. July 1, 1954.)

§ 407.290. Initiating State To Receive Copies of Order.

The court of this State when acting as a responding court shall cause to be transmitted to the initiating court a copy of all orders of support or for reimbursement thereof.

HISTORY: (Enact.A. 1954, ch. 190, § 21; 1972, ch. 158, § 12.)

§ 407.300. Powers of Court To Assure Compliance With Its Orders.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) To require the defendant to make payments at specified intervals to the clerk of the court or an official designated by the court or the obligee and to report personally to such clerk at such times as may be deemed necessary;

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (Enact.A. 1954, ch. 190, § 22, eff. July 1, 1954.)

§ 407.310. Duty of Court When Acting as Responding State To Transmit Payments and Furnish Certified Statements.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court or official designated by the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (Enact.A. 1954, ch. 190, § 23, eff. July 1, 1954.)

§ 407.320. Court of this State as Initiating State To Receive and Disburse Payments.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court or the official designated to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (Enact.A. 1954, ch. 190, § 24, eff. July 1, 1954.)

§ 407.330. Competency of Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (Enact.A. 1954, ch. 190, § 25, eff. July 1, 1954.)

§ 407.340. Repealed.

§ 407.350. Application of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (Enact.A. 1954, ch. 190, § 27, eff. July 1, 1954.)

Cases

Modification of judgment.

Where two States had adopted the Uniform Support of Dependents Act, the responding State had no authority to change or alter the original judgment. Hamilton v. Hamilton (1972), 476 S.W.2d 197.

§ 407.360. Effect of Participation in Proceedings.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceedings.

HISTORY: (Enact.A. 1954, ch. 190, § 28, eff. July 1, 1954.)

Cases

Order from another State.

The circuit court properly refused to recognize the action of Pennsylvania court modifying support order as to younger son where it was clear from mother's petition to the Pennsylvania court and the accompanying documents that she was seeking enforcement of the Kentucky support order as to the older son and she did not subject herself to the jurisdiction of the Pennsylvania court for an independent action by her former husband relating to his support obligations for his younger son. Abbott v. Abbott, 673 S.W.2d 723 (Ky.Ct.App., 1983).

§ 407.370. Extradition; Governor May Require Commonwealth Attorney To Investigate Before Demand.

(1) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the

support of a person, the Governor of this State may require any Commonwealth's attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(2) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any Commonwealth's attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to hurt the demand if the obligee prevailed and the person demanded is subject to a support order. The Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (Enact.A. 1972, ch. 158, § 3.)

§ 407.380. Continuance; By Either Party.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (Enact.A. 1972, ch. 158, § 12.)

§ 407.390. Immunity From Self-incrimination.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (Enact.A. 1972, ch. 158, § 13.)

§ 407.400. Evidence; Civil Rules To Apply.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is

unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (Enact.A. 1972, ch. 158, § 14.)

§ 407.410. Nonpaternity as a Defense; Adjudication of Paternity Issue.

1. Once the issue of paternity has been determined according to the laws of this State or any other State, the obligor cannot use the defense of nonpaternity in an action under this chapter.

2. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both parties are present at the hearing or if proof required in the case indicates that the presence of either or both is not necessary, the court shall adjudicate the paternity issue; or if both parties are not present at the hearing and the proof indicates that the presence of both parties is required then the court shall continue the hearing for another date so as to obtain the presence of both parties for a trial, pursuant to Ky.Rev.Stat. ch. 406, and all remedies and defenses under that statute shall be available and apply to the trial of the paternity issue under this chapter, except that all pre-trial discovery had upon the out-of-state obligee shall consist of written interrogatories pursuant to Civil Rule 33, by depositions upon written questions, pursuant to Civil Rule 31, by request for production of documents, pursuant to Civil Rule 34, or requests for admission, pursuant to Civil Rule 36, only. In no event shall the obligee be required to appear in this State as responding State, for any pre-trial discovery.

HISTORY: (Enact.A. 1972, ch. 158, § 16; 1978, ch. 402, § 6, eff. June 17, 1978; 1984, ch. 111, § 163, eff. July 13, 1984.)

Cases

In general.

Under the Uniform Reciprocal Enforcement of Support Act, the issue of paternity may be raised by the defendant unless it has been previously judicially determined. Dept. of Economic Secur. v. Shanklin (App. 1974), 514 S.W.2d 682.

Cited in Locke v. Zollicoffer, 608 S.W.2d 54 (Ky. 1980).

§ 407.420. Effect of Pending or Prior Actions or Proceedings on Actions Under this Chapter.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard the court must conform its order to the amount allowed in the

other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (Enact.A. 1972, ch. 158, § 17.)

§ 407.430. Jurisdiction; Both Parties Resident of this State; Different Counties.

This chapter applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the county attorney of their receipt. The county attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (Enact.A. 1972, ch. 158, § 18.)

§ 404.440. Appeal By Secretary for Human Resources; When.

If the Secretary for Human Resources or his authorized representative is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or if the support order was issued in another State, cause the appeal to be taken in the other State. In either case, expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (Enact.A. 1972, ch. 158, § 19; 1974, ch. 74, Art. VI, § 107(19).)

§ 407.450. Register of Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee may register the foreign support in a court of this State.

HISTORY: (Enact.A. 1978, ch. 402, § 2, eff. June 17, 1978.)

§ 407.460. Circuit Clerk To Maintain Registry.

Each circuit clerk shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (Enact.A. 1978, ch. 745, § 3, eff. June 17, 1978.)

§ 407.470. County Attorney To Represent Obligee; Registration Procedure; Confirmation After Notice.

If this State is acting either as a rendering or a registering State the county attorney shall represent the obligee upon the request of the court or an appropriate welfare official or State agency. If the county attorney neglects or refuses to represent the obligee, the attorney general may order him to comply or may undertake the representation.

(1) An obligee seeking to register a foreign support order in a court of this State shall transmit to the circuit clerk the following:

(a) Three (3) certified copies of the order with all modifications thereof;

(b) A copy of the reciprocal enforcement of support act of the State in which it was made; and

(c) A verified statement, signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

(2) Upon receipt of the documents required by subsection (1) of this section, the circuit clerk shall without payment of a fee or cost file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter. Thereafter the circuit clerk shall send by certified mail to the obligor notice of the registration with a copy of the registered support order and the post office address of the obligee.

(3) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. The registered foreign support order is confirmed if the obligor fails to petition the court.

HISTORY: (Enact.A. 1978, ch. 402, § 4, eff. June 17, 1978; 1980, ch. 114, § 104, eff. July 15, 1980.)

§ 407.480. Effect of Registration.

Upon registration a foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in a like manner.

HISTORY: (Enact.A. 1978, ch. 402, § 5, eff. June 17, 1978.)

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Subpart A: General Provisions

§ 1641. Purposes.

The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

URESA (Rev.Stat. 13:1641 to 13:1698) has as its primary purpose the prevention of an obligor from avoiding his parental duty of support by simply living in a different State than his children. State v. Shows, App. 2 Cir. 1984, 445 So.2d 107.

There are no prescriptive limitations on right to initiate action for support of unemancipated minor child, during child's minority, and neither laches nor estoppel bars long-delayed demand for support of minor child. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Clear and unmistakable spirit of Uniform Reciprocal Enforcement of Support Act recognizes a single duty to support one's children, and it also impliedly declares that the duty is of such magnitude and scope as to impel the jurisdictions which have enacted the statute to cooperate fully with each other in its enforcement. Davis v. Contorono, App. 1970, 234 So.2d 470.

Validity.

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, App. 1981, 396 So.2d 434.

§ 1642. Definitions.

(a) "COURT" means the juvenile court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support, whether imposed or imposable by law or order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this part.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "JUVENILE COURT" includes a family court or other court vested with jurisdiction over matters pertaining to juveniles.

(f) "LAW" includes both common and statutory law.

(g) "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance or has income above the poverty level.

(h) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(i) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(j) "REGISTER" means to record or file in the Registry of Foreign Support Orders.

(k) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(l) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(m) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(n) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(o) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1643. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remdies.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Judgment rendered pursuant to Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) procedure cannot have effect of modifying or superseding a previous judgment of support rendered in a civil proceeding such as a divorce decree, and acceptance of payments or request that payments be made under a URESA judgment cannot serve as basis for an estoppel to claim benefits due under a previous civil judgment of support. Trice v. Trice, 428 So.2d 1265 (La., 1983).

Divorced wife was neither equitably nor judicially estopped from claiming difference between amount of child support provided in divorce decree and reduced amount provided for in proceeding brought by someone other than the wife under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.), notwithstanding contention that wife acquiesced in the reduced amount by contacting husband's attorney when payments under the URESA judgment were not received on time and by filing petition for an increase in the URESA proceeding. Id.

Uniform Reciprocal Enforcement of Support Act (13:1641 et seq.) order of Louisiana court, acting as a responding State, did not supersede previous judgment of child support of Mississippi, the rendering State, and therefore former wife had the right to petition District Court in Louisiana to recognize her Mississippi judgment. Madden v. Davis, 422 So.2d 542 (La., 1982).

§ 1644. Extent of Duties of Support.

Duties of support arising under the laws of this State, when applicable under Rev.Stat. 13:1661, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Construction and application.

If monthly award of support was intended to include support for two adult children, it included duty of support not owed under Louisiana laws and thus not enforceable under the Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 to 13:1698). State v. Shows, App. 2 Cir.1984, 445 So.2d 107.

Fact that action was brought under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) did not impair or diminish any of father's rights and did not increase or add anything to his duty to support his daughter. Gambino v. Gambino, App. 1981, 396 So.2d 434.

There are no prescriptive limitations on right to initiate action for support of unemancipated minor child, during child's minority, and neither laches nor estoppel bars long-delayed demand for support of minor child. Id.

Even though husband could claim credit for child support payment she made pursuant to judgments which were obtained in Alaskan court pursuant to the Uniform Reciprocal Enforcement of Support Act and which ordered husband to pay wife specific sum for alimony and child support, such judgments did not have effect of modifying prior

judgments of Louisiana court regarding child support and alimony. Moreau v. Falgout, App. 1974, 304 So.2d 429.

Even though a decree fixing alimony or child support should be signed, it is not error on part of trial judge to take notice of minutes of his own court in matters relating to alimony and/or child support when judgment is called upon to fix accumulated arrearages. Id.

Louisiana Legislature could not enact law which would require Indiana resident (who was never a Louisiana resident) to support his children, even though children resided in Louisiana. Imperial v. Hardy, App. 1973, 287 So.2d 224, writ issued 290 So.2d 897, reversed on other grounds 302 So.2d 5.

Credits.

Former husband was entitled to credit for amounts paid under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) prior to judgment for arrearages of child support, but judgment rendered pursuant to the URESA procedure would not modify previous support judgment of another court. Goldstein v. Goldstein, App. 1982, 409 So.2d 1245.

Subpart B: Criminal Enforcement

§ 1651. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person.

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1652. Conditions of Interstate Rendition.

A. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

B. If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally

in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (A. 1977, No. 610, § 1.)

Subpart C: Civil Enforcement

§ 1661. Choice of Law.

Duties of support applicable under this part are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Louisiana Legislature could not enact law which would require Indiana resident (who was never a Louisiana resident) to support his children, even though children resided in Louisiana. Imperial v. Hardy, App. 1973, 287 So.2d 224, writ issued 290 So.2d 897, reversed on other grounds 302 So.2d 5.

§ 1662. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Trial court was fully authorized and empowered in action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) to award child support for period of time between date of demand and date of judgment, and same did not include "arrearages" as term is used in Act. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Even though action was initiated in New Jersey under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) it was to be considered in Louisiana like any other suit or rule for enforcement of civil obligation to support minor child, and no proof that child was in destitute or necessitous circumstances was necessary before making award of support. Id.

Validity.

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, App. 1981, 396 So.2d 434.

This section refers, in use of word "arrearages," to money that has not been paid when due. Id.

§ 1663. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

State initiating action against obligor for reimbursement of AFDC payments under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) does not have right to determine actuality of obligation, amount owed, or arrearages, since this is perogative of responding State, i.e., State where obligor resides or resided during period support was owed. City and County of San Francisco v. Juergens, 425 So.2d 992 (La., 1983).

Where California city and county made no attempt to locate father residing in Louisiana either prior to or after decision to award mother AFDC funds, and father, who did not know whereabouts of mother and child, had not been afforded procedural protections required in child support cases, city and county were not entitled to have their unilateral administrative decision as to father's child support obligation enforced in Louisiana courts under Uniform Reciprocal Enforcement of Support Act. Id.

Even though action was initiated in New Jersey under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) it was to be considered in Louisiana like any other suit or rule for enforcement of civil obligation to support minor child, and no proof that child was in destitute or necessitous circumstances was necessary before making award of suport. Gambino v. Gambino, 396 So.2d 434 (La., 1983).

Trial court was fully authorized and empowered in action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) to award child support for period of time between date of demand and date of judgment, and same did not include "arrearages" as term is used in Act. Id.

This section refers, in use of word "arrearages," to money that has not been paid when due. Id.

Where Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) is employed, obligee must prove its case as in any other civil action. City and County of San Francisco v. Juergens, 425 So.2d 992 (La., 1983).

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, 396 So.2d 434 (La., 1981).

§ 1664. Jurisdiction.

Jurisdiction of any proceeding under this part is vested in the juvenile court.

Cases

In general.

Either under this section of LSA-C.J.P. or 16(A)(4), juvenile court of Jefferson Parish had exclusive jurisdiction over action brought under Uniform Act for support. Gambino v. Gambino, App. 1981 396 So.2d 434.

Court of appeal was unable to arrive at factual determination upon which to apply the applicable law to action by foreign city and county under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) for reimbursement for public assistance payments made to former wise for support of child, and thus remand for evidentary hearing was required, where, although trial judge found certain facts in his reasons for judgment which he dictated into the record, it appeared that judge relied upon facts ascertained in pretrial conference and documents not found on record on appeal. City and County of San Fransisco v. Juergens, App. 1980, 405 So.2d 1096.

§ 1665. Contents and Filing of Petition for Support; Venue.

A. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

B. The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that is should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1666. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney, upon the request of the court, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the legal counsel for the Department of Health and Human Resources may undertake the representation.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1667. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having custody of the minor, without appointment as guardian at litem.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Construction and application.

Even though plea of prescription should be raised by proper pleading and should not be urged solely by way of brief, failure to urge plea in trial court does not preclude its imposition on appeal. Moreau v. Falgout, App. 1974, 304 So.2d 429.

§ 1668. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1669. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State, when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

§ 1670. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon, it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1671. State Information Agency.

A. The Department of Health and Human Resources is designated as the State Information Agency under this part and as such it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this part and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar part. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the part and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this part; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the part it receives from courts or Information Agencies of other States, if said jurisdiction is unknown to the initiating State.

C. After the deposit of three copies of the petition and certificate and one copy of the part of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it may refer the matter to the legal counsel of the Department of Health and Human Resources who may undertake the representation.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1672. Duty of the Court and Officials of this State as Responding State.

A. After the responding court receives copies of the petition, certificate and part from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

B. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

C. If the prosecuting attorney neglects or refuses to represent the obligee, the legal counsel of the Department of Health and Human Resources may undertake the representation.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1673. Further Duties of Court and Officials in the Responding State.

A. The prosecuting attorney, on his own initiative, shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

B. If the obligor or his property is not found in the judicial district and the prosecuting attorney discovers that the obligor or his property may be found in another judicial district of this State or in another State he shall so inform the court. Thereupon the clerk of court shall forward the documents received from the court in the initiating State to a court in the other judicial district or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

C. If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Either under Rev.Stat. 13:1664 or under LSA-C.J.P. art. 16(A)(4), juvenile court of Jefferson Parish had exclusive jurisdiction over action brought under Uniform Act for Support. Gambino v. Gambino, App. 1981, 396 So.2d 434.

§ 1674. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Validity.

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Evidence.

Under the Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1661 et seq.) affidavit of wife made in the initiating State without notice to defendant nor an opportunity for cross-examination was inadmissible at a hearing in the responding State to determine wife's need for child support. Freano v. Rosenbaum, App. 1981, 399 So.2d 758.

Presumptions and burden of proof.

In a hearing for enforcement of support under the Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1661 et seq.) plaintiff must prove her case as in any other civil action. Freano v. Rosenbaum, App. 1981, 399 So.2d 758.

§ 1675. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party, and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

§ 1676. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Validity.

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, App. 1981, 396 So.2d 434.

§ 1677. Rules of Evidence.

In any hearing for the civil enforcement of this part the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity, Rev.Stat. 13:1681, or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support is unaffected by any interference with rights of custody or visitation granted by a court.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Where Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) is employed, obligee must prove its case as in any other civil action. City and County of San Francisco v. Juergens, 425 So.2d 992 (La., 1983).

Evidence in action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) failed to sustain defendant's claim that there was settlement contract. Gambino v. Gambino, App. 1981, 396 So.2d 434.

If trial court considered petition certified by initiating court, under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) to be judgment entitled to full faith and credit under United States Constitution, trial court was in error. Id.

Certification requirement for petitions under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13.1641 et seq.) should be considered by judge of responding court as merely indication that certifying judge believes that duty to support probably exists and that claim probably is entitled to be considered by responding court as case under such Act, and certification does not result in determination that binds court later in adjudication of merits of the case. Id.

In proceeding initiated in California court and transmitted to Louisiana family court under civil enforcement sections of Uniform Reciprocal Enforcement of Support Act, testimony of plaintiff alone given by her during hearing before California court, at which defendant was not cited to appear and hence had no opportunity for cross-examination, amounted to nothing more than an inadmissible ex parte statement and was insufficient to sustain judgment condemning defendant to pay child support. Carpenter v. Carpenter, 92 So.2d 393 (La., 1957).

Presumptions and burden of proof.

Where URESA (Rev.Stat. 13:1641 to 13:1698) is employed, obligee must prove his or her case as in any other civil action. State v. Shows, App. 2 Cir. 1984, 445 So.2d 107.

Validity.

Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) as enacted in this State does not violate any procedural or substantive right of due process or

any right to equal protection or any right to confrontation of witnesses in civil proceeding. Gambino v. Gambino, App. 1981, 396 So.2d 434.

§ 1678. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding State or other proper State agency. The court and prosecuting attorney of any judicial district in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the judicial district in which it was first issued. If enforcement is impossible or cannot be completed in the judicial district in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any judicial district in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Certification requirement for petitions under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) should be considered by judge of responding court as merely indication that certifying judge believes that duty to support probably exists and that claim probably is entitled to be considered by responding court as case under such Act, and certification does not result in determination that binds court later in adjucation of merits of the case. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Where it was undisputed that payments made by defendant husband pursuant to Uniform Reciprocal Enforcement of Support Act judgment were in fulfillment of his obligation to support his children, since there was but one obligation, no option rested with husband to impute payment to one judgment or the other. Davis v. Contorno, App. 1970, 234 So.2d 470.

Modification of order.

Record was void of any useful evidence as to what situation existed at date when original child support order was decreed and how that situation has changed so as to warrant filing of petition seeking an increase; therefore, wife failed to demonstrate change in circumstances sufficient to justify modification in action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.). Barker v. Barker, App. 5 Cir. 1983, 430 So.2d 827.

Judgment and order.

If trial court considered petition certified by initiating court, under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) to be judgment entitled to full faith and credit under United States Constitution, trial court was in error. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Even though judgment reducing alimony and child support from $220 to $195 per month was not signed, husband could claim benefit of reduction in action by wife seeking to have arrearages fixed and, as fixed, to obtain judgment upon which to execute. Moreau v. Falgout, App. 1974, 304 So.2d 429.

Where stipulation in wife's action to recover accumulated arrearages of alimony and child support showed that former husband had paid $11,224.08 of alleged $22,750 owed but husband, who contended that payments due during interim period between October 15, 1962 judgment of separation and March 20, 1964 judgment of divorce in his favor had prescribed, did not present any evidence showing portion of sum paid attributable to such interim period, court could not allocate any amount to the paid funds as being for such interim period for purposes of determining husband's plea of prescription. Id.

Even though husband could claim credit for child support payments he made pursuant to judgments which were obtained in Alaskan court pursuant to the Uniform Reciprocal Enforcement of Support Act and which ordered husband to pay wife specific sum for alimony and child support, such judgments did not have effect of modifying prior judgments of Louisiana court regarding child support and alimony. Id.

In wife's action to recover accumulated arrearages of alimony and child support from former husband who had paid $11,224.08 of money owed, husband who alleged that payments due between October 15, 1962 judgment of separation ordering alimony and child support and March 20, 1964 divorce decree in his favor had prescribed had burden of proving that a portion of sum paid by him was to be applied to amount ordered in separation decree. Id.

Medical expenses.

In action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) trial court properly refused to require defendant father to pay for surgery on mother. Gambino v. Gambino, App. 1981, 396 So.2d 434.

In proceeding under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) mother's uncontradicted testimony that child had some normal routine medical expense was sufficient evidence to support trial court's order that father pay all child's medical and dental expenses in the future. Id.

§ 1679. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1680. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due.

(2) Require the obligor to report personally and to make payments at specified intervals to the proper State agency, and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1681. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought, and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1682. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the proper State agency:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise, and

(2) To furnish to the initiating court, upon request, a certified statement of all payments made by the obligor.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1683. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out by the proper State agency.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1684. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid there of it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or

proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1685. Application of Payments.

A support order made by a court of this State pursuant to this part does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1686. Effect of Participation in Proceeding.

Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1687. Intrastate Application.

This part applies if both the obligee and the obligor are in this State but in different judicial districts. If the court of the judicial district in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another judicial district in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the judicial district in which the obligor or his property is found. The clerk of the court of the judicial district receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the judicial district to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1688. Appeals.

If the prosecuting attorney is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the proper appellate court, if the support order was issued by a court of this State; or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

In general.

Where defendant in action under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) was allowed a year in which pay support that accrued between demand and judgment, same had effect of suspension of duty to pay support, and trial court correctly ruled that defendant was not entitled to suspensive appeal. Gambino v. Gambino, App. 1981, 396 So.2d 434.

Time for appeal.

Father's application for supervisory writs to reduce child support would be denied where delay for appeal of judgment rejecting demand to reduce child support he was previously ordered to pay under Rev.Stat. 13:1641 et seq. expired before filing of application. State ex rel. Shows v. Shows, App. 2 Cir.1983, 430 So.2d 816, remanded 434 So. 2d 1090.

Subpart D: Registration of Foreign Support Orders

§ 1691. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1692. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1693. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1694. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the prosecuting attorney, upon the request of the court, shall represent the obligee in proceedings under this part.

If the prosecuting attorney neglects or refuses to represent the obligee, the legal counsel for the Department of Health and Human Resources may undertake the representation.

HISTORY: (A. 1977, No. 610, § 1.)

§ 1695. Registration Procedure; Notice.

A. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents, the clerk of the court, without payment of filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this part.

B. Promptly upon registration the clerk of court shall send by certified or registered mail to the obligor, at the address given, a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (A. 1977, No. 610, § 1.)

Cases

Construction and application.

Court of Appeal was unable to arrive at factual determination upon which to apply the applicable law to action by foreign city and county under Uniform Reciprocal Enforcement of Support Act (Rev.Stat. 13:1641 et seq.) for reimbursement for public assistance payments made to former wife for support of child, and thus remand for evidentiary hearing was required, where, although trial judge found he dictated into the record, it appeared that judge relied upon facts ascertained in pretrial conference and documents not found in the record on appeal. City & County of San Francisco v. Juergens App. 1980, 405 So.2d 1096.

Even though husband could claim credit for child support payments he made pursuant to judgments which were obtained in Alaskan court pursuant to the Uniform Reciprocal Enforcement of Support Act and which ordered husband to pay wife specific sum for alimony and child support, such judgments did not have effect of modifying prior judgments of Louisiana court regarding child support and alimony. Moreau v. Falgout, App. 1974, 304 So2d 429.

§ 1696. Effect of Registration; Enforcement Procedure.

A. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

B. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

C. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order in pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal in concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

§ 1697. Uniformity of Interpretation.

This part shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 1698. Short Title.

This part may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

HISTORY: (A. 1977, No. 610, § 1.)

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MAINE

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Article 1: General Provisions

§ 331. Purposes.

The purposes of this subchapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (R.S. 1954, ch. 167, § 1.)

Cases

In general.

This subchapter is remedial in nature and is to be construed liberally with reference to object to be obtained, and every endeavor should be made by the courts to render it operable. Lambrou v. Berna (1969) 154 Me. 352,148 A2d 697.

This subchapter is designed to enable a dependent in one State to initiate proceedings in the State of his domicile for purpose of securing money for support from a person residing in another State who is legally liable for the support of such dependent. Id.

The purpose of this subchapter was to remedy a deplorable situation, which under the law, as it existed prior to its enactment, could compel a father to support a child only by coming to the State having jurisdiction over the father and bringing proceedings in the courts of that State; this in most cases being an impossible situation because it involved much expense, trouble and time, and was impractical. Rosenberg v. Rosenberg (1956) 152 Me. 161, 125 A.2d 863.

The purpose of this subchapter is to improve and extend by reciprocal legislation the duties of support and to make uniform the law with respect thereto, and to prevent an individual charged with support from avoiding responsibility by crossing the State line, or when served with process, immediately moving to another State. (1956) 4 Portland L. Rev. 50.

Validity.

The courts of several States have declared this subchapter not to be in violation of the Federal constitution. (1956) 4 Portland L.Rev.50.

Law governing.

In proceeding under this subchapter rights of parties were determined by law of Maine, Maine court having jurisdiction of respondent. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

Under this subchapter, laws of responding State, where individual who is allegedly liable for support resides, control, and not the laws of the State in which petition for support is filed. Rosenberg v. Rosenberg (1956) 152 Me. 161, 125 A.2d 863.

Proceedings by child against father.

Under this subchapter the child may in the State of his or her domicile initiate proceedings against the father in that State for action to be taken by the State having jurisdiction of the father. Rosenberg v. Rosenberg (1956) 152 Me. 161, 125 A.2d 863.

The final decision, or judgment under this subchapter must be made by the court having jurisdiction over the father, and while the initiating State makes recommendations, such recommendations are not binding on the responding State. Id.

§ 332. Definitions.

As used in this subchapter unless the context requires otherwise:

1. "COURT" means the superior court or the District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

2. "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law, or by order, decree or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, judicial or legal separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

2-A. "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this Act.

3. "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

4. "LAW" includes both common and statute law.

5. "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

6. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

6-A. "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

6-B. "REGISTER" means to file in the Registry of Foreign Support Orders.

6-C. "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

6-D. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

7. "RESPONDING STATE" means any State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commended.[1/]

8. "STATE" includes any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

9. "SUPPORT ORDER" means any judgment, decree or order of support in favor of an obligee whether temporary of final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

10. "TITLE IV-D CASE" refers to an action initiated by any State or State agency responsible for enforcing child support obligations pursuant to United States Code, Title 42, § 651 et seq., as amended.

HISTORY: (R.S. 1954, ch. 167, § 2; 1963, ch. 402, § 273; 1971, ch. 393, § 1; 1979, ch. 90, § 1.)

§ 333. Remedies Additional.

The remedies provided in this subchapter are in addition to and not in substitution for any other remedies.

HISTORY: (R.S. 1954, ch. 167, § 3.)

§ 334. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 391, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (R.S. 1954, ch. 167, § 4.)

Article 2: Criminal Enforcement

§ 361. Interstate Rendition.

The Governor of this State may demand of the Governor of another State the surrender of a person found in such other State who is charged criminally in this State of failing to provide for the support of any person in this State; or may surrender on demand by the Governor of any other State a person found in this State who is charged criminally in such other State with failing to provide for the support of a person in such other State The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand even if the person whose surrender is demanded was not in the demanding

1/ So in enrolled bill; probably should read "commenced."

State at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding State.

HISTORY: (R.S. 1954, ch. 167, § 5; 1971, ch. 393, § 2.)

Cases

In general.

Intent of this section providing for interstate rendition of "any person found in this State who is charged in such other State with a crime of failing to provide for the support of a person in such other State" was to encompass all forms of criminal nonsupport with a view to facilitating the extradition of persons seeking to evade their most important obligations by flight. Gallant v. State (1976) Me., 356 A.2d 734.

Extradition proceedings brought against petitioner, who was indicted in Georgia for the felony of abandoning his minor children, were governed by the Uniform Reciprocal Enforcement of Support Act, not by the Uniform Criminal Extradition Act (§ 201 et seq. of title 15) and the trial justice was therefore correct in ruling that petitioner's presence in the demanding State at the time of the commission of the crime did not have to be alleged or proved to support the extradition request. Id.

§ 362. Conditions of Interstate Rendition.

Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated, or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (R.S. 1954, ch. 167, § 6; 1971, ch. 393, § 3.)

Article 3: Civil Enforcement

§ 391. Choice of Law.

Duties of support applicable under this subchapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (R.S. 1954, ch. 167, § 7.)

§ 392. Remedies of State or Political Subdivision Furnishing Support.

If the State or a political subdivision thereof furnishes support to an individual obligee, it has the same right to initiate a proceeding under this Act as the individual obligee to whom the support was furnished for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (R.S. 1954, ch. 167, § 8; 1971, ch. 393, § 4.)

§ 393. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including the proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Jurisdiction of all proceedings hereunder shall be vested in the Superior Court or the District Court. All proceedings may be commenced and acted upon by the Superior Court in vacation before a single justice as well as in term time or by the District Court.

HISTORY: (R.S. 1954, ch. 167, § 9; 1957, ch. 280; 1963, ch. 402, § 274; 1971, ch. 393, §§ 5, 6.)

§ 394. Contents and Filing of Petition for Support; Venue.

The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names or aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

The residence of the obligee shall determine the jurisdiction of the court. The court shall not decline or refuse to accept or forward the petition on the ground that it should be filed in some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (R.S. 1954, ch. 167, § 10; 1971, ch. 393, § 7.)

Name, address, and circumstances.

This section provides that petition shall state the name and, so far as is known to petitioner, the address and circumstances of the respondent and his dependents for whom support is sought. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

Where petition in proceeding under this subchapter clearly indicated that the dependent child "Ann," was the child of petitioner and of respondent named in the petition as "Ulysses G. Berna" and that child was born to petitioner during time she was married to respondent, while trial court in its discretion had authority to return petition to initiating State for correction to give child's full name, its refusal to do so did not constitute an abuse of discretion. Id.

Return of petition for clarification.

In proceeding under this subchapter initiated in Michigan and transferred to Maine, trial court's refusal to return petition to initiating State for clarification because respondent had no opportunity to examine petitioner to verify or disprove facts stated in petition and that he was entitled to have pertinent information and evidence furnished by initiating State was not an abuse of discretion. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

Sufficiency of petition.

Petition which was filed for support under this chapter, and which alleged that obligee was 28-year-old female who was unable to maintain herself, and who was likely to become a public charge, sufficiently stated a cause for relief under this chapter. Rosenberg v. Rosenberg (1956) 152 Me. 161,125 A.2d 863.

Admissibility of allegations as evidence.

The allegations in petition under this subchapter were made in the initiating State without notice to respondent and without an opportunity for cross-examination on his part, and, although necessary for purpose of bringing the case before proper court of initiating State for transmission to responding State, were not admissible as evidence in proof of such allegations, since they amounted to nothing more than inadmissible ex parte Statements. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

§ 395. Officials To Represent Obligee.

If this State if acting as an initiating State, the District Attorney upon the request of the court shall represent the obligee, in any proceedings under this act. If the District Attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation. In any proceeding involving public aid a representative of the Attorney General may represent the obligee.

HISTORY: (R.S. 1954, ch. 167, § 11; 1955, ch. 5, § 1; 1959, ch. 75, § 9, 1971, ch. 393, § 8; 1973, ch. 567, § 20, eff. Jan. 1, 1975.)

Cases

Provisions of the Uniform Reciproal Enforcement of Support Act required court in initiating State, if it found that husband as obligor owed a duty of support, to certify wife's petition to court in responding State and to receive and disburse payments made by husband, but it was not required to order District Attorney to represent wife on her claim for alleged arrearages. Richardson v. Richardson (1981) Me., 436 A.2d 1312.

Fact that court in initiating State may choose against requesting representation by District Attorney on a given petition under Uniform Reciprocal Enforcement of Support Act does not necessarily mean that court must dismiss any petition brought under Act which contains a request for such representation if such a request is denied. Id.

§ 396. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (R.S. 1954, ch. 167, § 12.)

Cases

Capacity of petitioner.

Where petition under this subchapter was brought on behalf of alleged minor dependent, born during wedlock, by the mother of such dependent against its alleged father, the respondent by appearing generally and participating in hearing without objecting to capacity of petitioner to bring the petition waived any right to raise such issue later and hence could not claim want of capacity on part of petitioner. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

Name of minor.

This section, unlike provision in North Carolina Act, did not require the petition to be brought in the name of the dependent; it was sufficient that the petition be brought on behalf of such dependent. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

§ 397. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and shall cause 3 copies of the petition and its certificate and one copy of this Act to be sent to the responding court. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency forward them to the proper court and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (R.S. 1954, ch. 167, § 13; 1971, ch. 393, § 9.)

Cases

In general.

Provisions of the Uniform Reciprocal Enforcement of Support Act required court in initiating State, if it found that husband as obligor owed a duty of support, to certify wife's petition to court in responding State and to receive and disburse payments made by husband, but it was not required to order District Attorney to represent wife on her claim for alleged arrearages. Richardson v. Richardson (1981) Me., 436 A.2d 1312.

§ 398. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service or process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, to be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (R.S. 1954, ch. 167, § 14; 1971, ch. 393, § 10.)

§ 399. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may, as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or, as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in the amount set by the court to assure his appearance at the hearing.

HISTORY: (R.S. 1954, ch. 167, § 15; 1971, ch. 393, § 10.)

Cases

Arrest before flight.

Where the obligor is likely to flee before the court can acquire jurisdiction, he may be arrested although the issue has not been determined by a court of last resort. (1956) 4 Portland L. Rev. 50.

§ 400. State Information Agency.

1. Department of Human Services.

The Department of Human Services is designated as the State Information Agency under this Act. It shall:

A. Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of the

Legislature the agency shall distribute copies of any amendments to the Act and a statement of their effective date to all other State Information Agencies;

B. Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

C. Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

2. Reference.

If the State Information Agency does not know the location of the obligor or his property in the State, it shall refer same to the State location service in the Department of Human Services.

3. Information to Attorney General.

After the deposit of 3 copies of the petition and certificate and one copy of the Act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the District Attorney is not prosecuting the case diligently, it shall inform the Attorney General who may undertake the representation.

HISTORY: (R.S. 1954, ch. 167, § 16; 1971, ch. 393, § 10; 1973, ch. 567, § 20, eff. Jan. 1, 1975; 1975, ch. 293, § 4.)

§ 401. Duty of the Court and Officials of this State as Responding State.

After the responding court receives copies of the petition, certificate and act from the initiating court, the clerk of the court shall docket the case and notify the District Attorney of his action.

The District Attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

If the District Attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (R.S. 1954, ch. 167, § 17; 1971, ch. 393, § 10; 1973, ch. 567, § 20, eff. Jan. 1, 1975.)

§ 402. Further Duties of Court and Officials in the Responding State.

The District Attorney on his own initiative shall use all means at his disposal to locate this obligor or his property, and if because of inaccuracies in the petition or otherwise, the court cannot obtain jurisdiction, the District Attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

If the obligor or his property is not found in the county, and the District Attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

If the District Attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (R.S. 1954, ch. 167, § 18; 1955, ch. 5, § 2; 1971, ch. 393, § 10; 1973, ch. 567, § 20, eff. Jan. 1. 1975.)

§ 402-A. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1971, ch. 393, § 11.)

§ 402-B. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in his testimony.

HISTORY: (1971, ch. 393, § 11.)

§ 402-C. Rules of Evidence.

In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the Superior or District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty to support, subject only to any defenses available to an obligor with respect to paternity under § 411 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1971, ch. 393, § 11.)

§ 403. Order of Support.

If the court of the responding State finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to that order. Support orders made pursuant to this Act shall require that payments be made to the clerk of the court of the responding State. If the matter is a Title IV-D case, support orders made pursuant to this Act shall require that payments be made to the cashier section of the Department of Human Services. For Title IV-D cases in which the responding court has previously established a support order, the department shall not be required to seek an amendment to the support order in order to direct payments to the Department of Human Services. The obligor shall commence payment to the State upon notice from the department. The court and District Attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the District Attorney shall send a certified copy of the order to the District Attorney of any county in which it appears that proceedings would be effective. The District Attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (R.S. 1954, ch. 167, § 19; 1971, ch. 393, § 12; 1979, ch. 90, § 2.)

Cases

Evidence.

Under this section providing that if court of responding State finds a duty of support, it may order respondent to furnish support or reimbursement therefor and subject the property of respondent to such order, court before making a valid order must find a duty on part of respondent to support the dependent and such finding must be based upon evidence given at hearing of the case. Lambrou v. Berna (1959) 154 Me. 352, 148 A.2d 697.

In proceeding under this subchapter, wherein respondent's testimony disclosed that upon his return from overseas service on March 21, 1946, he lived with petitioner for 5 or 6 weeks and neither saw nor heard from petitioner afterwards, and only information that came to his attention that petitioner had given birth to a child was through a letter received by someone other than himself, and there was no evidence relating to birth of child other than allegation in petition that child was born on December 10, 1946, there was no evidence of probative force to justify a finding that a child was born to petitioner on such date, and hence there was no basis for a finding of duty of support on part of respondent. Id.

§ 404. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (R.S. 1954, ch. 167, § 20; 1971, ch. 393, § 13.)

§ 405. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

1. Recognizance.

To require the obligor to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the obligor.

2. Payments.

To require the obligor to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

3. Violations.

To punish under the power of contempt the obligor who violates any order of the court, or to issue executions as in actions of debt. When the obligor is committed to jail for contempt or on execution issued, as provided, the county having jurisdiction of the process shall bear the expense of his support and commitment and he may be discharged in the same manner as provided by § 722.

HISTORY: (R.S. 1954, ch. 167, § 21; 1955, ch. 5, § 3; 1957, ch. 22; 1971, ch. 393, § 14.)

§ 406. Additional Duties of Court in this State When Acting as Responding State.

The court of this State when acting as responding State shall have the following duties which may be carried out through the clerk of the court, except in Title IV-D cases, which shall be carried out through the Department of Human Services:

1. Transit payments.

Upon receipt of a payment made by the obligor pursuant to any order of the court or otherwise, to transmit the same to the court of the initiating State or a Title IV-D agency in the initiating State; and

2. Certified statement of payments.

Upon request to furnish to the court of the initiating State, or a Title IV-D agency, in the initiating State, a certified statement of all payments made by the obligor.

HISTORY: (R.S. 1954, ch. 167, § 22; 1971, ch. 393, § 14; 1979, ch. 90, § 3.)

§ 407. Additional Duty of Court of this State When Acting as Initiating State.

The court of this State, when acting as an initiating State, shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the obligor or transmitted by the court of the responding State.

HISTORY: (R.S. 1954, ch. 167, § 23; 1971, ch. 393, § 14.)

Cases

In general.

Provisions of the Uniform Reciprocal Enforcement of Support Act required court in initiating State, if it found that husband as obligor owed a duty of support, to certify wife's petition to court in responding State and to receive and disburse payments made by husband, but it was not required to order District Attorney to represent wife on her claim for alleged arrearages. Richardson v. Richardson (1981) Me., 436 A.2d 1312.

§ 408. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this subchapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (R.S. 1954, ch. 167, § 24.)

§ 409. Application of Payments.

A support order made by a court in this State pursuant to this Act does not nullify and is not nullified by a support order made by a court in this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (R.S. 1954, ch. 167, § 25; 1971, ch. 393, § 15.)

§ 410. Effect of Participation in Proceeding.

Participation in any proceedings under this subchapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (R.S. 1954, ch. 167, § 26.)

§ 411. Paternity.

Paternity shall be determined in accordance with the Uniform Act on Paternity.

HISTORY: (1971, ch. 393, § 16.)

§ 412. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or if the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (1971, ch. 393, § 16.)

Cases

In general.

Where there was no final judgment as to claims for which lower court entered judgment in proceedings under the Uniform Reciprocal Enforcement of Support Act, the Supreme Judicial Court was without jurisdiction to consider other than the one claim despite the eagerness of counsel to argue the issues as to the other claims. Richardson v. Richardson (1981) Me., 436 A.2d 1312.

Where Petitioner in proceeding under the Uniform Reciprocal Enforcement of Support Act presented eight claims, but the trial court determined only one of those claims, the Supreme Judicial Court had jurisdiction to consider that claim under the collateral order exception to the final judgment rule. Id.

Article 4: Registration of Foreign Support Orders

§ 413. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1971, ch. 393, § 17.)

§ 414. Registration.

The obligee may register the foreign support order in a court in this State in the manner, with the effect and for the purposes provided in this subchapter.

HISTORY: (1971, ch. 393, § 17.)

§ 415. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1971, ch. 393, § 17.)

§ 416. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State, the District Attorney upon the request of the court shall represent the obligee in proceedings under this subchapter.

If the District Attorney neglects or refuses to present the obligee, the Attorney General may undertake the representation.

HISTORY: (1971, ch. 393, § 17; 1973, ch. 567, § 20.)

§ 417. Registration Procedure; Notice.

An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court 3 certified copies of the order with all modifications thereof, one copy of the reciprocal enforcement of support act of the State in which the order was made, and a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this Act.

Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall docket the case and notify the District Attorney of his action. The District Attorney shall proceed diligently to enforce the order.

HISTORY: (1971, ch. 393, § 17; 1973, ch. 567, § 20.)

§ 418. Effect of Registration; Enforcement Procedure.

Upon registration the registered support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1971, ch. 393, § 17.)

§ 419. Uniformity of Interpretation.

This Act shall be so construed as to effectuate its general purpose to make uniform the laws of those States which enact it.

HISTORY: (1971, ch. 393, § 17.)

§ 420. Short Title.

This Act shall be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (1971, ch. 393, § 17.)

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MARYLAND

MD. ANN. CODE §§ 10.301 to 10.340

§ 10.301. Definitions.

(a) In general.

In this subtitle, unless the context requires otherwise, the following words have the meanings indicated.

(b) "COURT" means:

(1) As to criminal proceedings, the District Court and any other court in this State that exercises criminal jurisdiction over the enforcement of laws respecting duties of support;

(2) As to civil proceedings, the circuit court for any county and juvenile courts having jurisdiction over the civil enforcement of laws respecting duties of support; and

(3) As to proceedings in another State, the court of any other State as defined in a substantially similar reciprocal law.

(c) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise.

(d) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by the provisions of this subtitle.

(e) "INITIATING STATE" means any State in which a proceeding in accordance with this or a substantially similar reciprocal law is commenced.

(f) "LAW" includes both common and statutory law.

(g) "OBLIGEE" means any person to whom a duty of support is owed and includes a State or political subdivision.

(h) "OBLIGOR" means any person owing a duty of support.

(i) "REGISTER" means to record in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(k) "RENDERING STATE" means any State in which a support order is originally entered.

(l) "RESPONDING STATE" means any State in which any proceeding in accordance with the proceeding in the initiating State is or may be commenced.

(m) "STATE" includes any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support whether temporary or final, whether subject to modification, revocation, or remission regardless of the kind of action in which it is entered.

HISTORY: (An.C. 1957, art. 89C, §2; 1984, ch. 296, § 2.)

Cases

The breadth of the language in the definitions included in the Uniform Reciprocal Enforcement of Support Act makes clear that the act was intended to provide a convenient enforcement mechanism for a broad spectrum of duties of support. Abb v. Crossfield, 326 A.2d 234 (Md., 1974).

§ 10.302. Purposes.

The purposes of this subtitle are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law that relates to them.

HISTORY: (An.C. 1957, art. 89C, § 1; 1984, ch. 296, § 2.)

Cases

In general.

One of the purposes of this article is to provide liberal enforcement in this State of the claims of nonresident parents and children entitled to support, and the claims of out-of-State welfare departments which have made support payments to such nonresident parents and children. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

Uniform Reciprocal Enforcement of Support Act must be liberally construed to authorize the Maryland courts to order child support commensurate with the child's current needs without being limited by previous court orders. Id.

Whether a foreign State court's order vacating its support order be viewed as a nullifying order or as an order affecting support, a Maryland court, acting as the responding State court in a Uniform Reciprocal Enforcement of Support Act proceeding, has the authority to enter an order, if warranted by the child's needs requiring the father to pay child support. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

This article does not address creation or resurrection of duties where none exist or where an existing duty has been relieved. Chance v. LaPausky, 402 A.2d 1329 (Md., 1979).

By the enactment of the Uniform Reciprocal Enforcment of Support Act, the legislature showed a policy of liberality towards the enforcement in Maryland of the claims of nonresident wives and children entitled to support. Zouck v. Zouck, 105 A.2d 214 (Md., 1954).

For general discussion of the Uniform Reciprocal Enforcement of Support Act, see Pennsylvania ex rel. Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

As to the right of jury trial in proceedings under the Uniform Reciprocal Enforcement of Support Act, see Pennsylvania ex rel. Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

§ 10.303. Remedies Additional.

The remedies provided in this subtitle are in addition to and not in substitution for any other remedies.

HISTORY: (An.C. 1957, art. 89C, § 3; 1984, ch. 296, § 2.)

Cases

In general.

Remedies under the Uniform Reciprocal Enforcement of Support Act are available if a prior court decree has expressly imposed an obligation of support, or even if, sub silentio, it leaves a statutory obligation to support as an imposable possibility. Chance v. LaPausky, 402 A.2d 1329 (Md., 1979).

The provisions of the Uniform Reciprocal Enforcement of Support Act are not substituted as remedy for the criminal prosecution for nonsupport. State v. James, 100 A.2d 12 (Md., 1953).

Other remedies not precluded.

The availability of an action under this article is an additional means of enforcing the foreign alimony decree, and does not preclude the pursuit of other remedies available. Barrell v. Barrell, 43 Md.App. 298, 405 A.2d 324 (1979), aff'd, 288 Md. 19, 415 A.2d 579 (1980).

§ 10.304. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 10.307 of this subtitle, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (An.C. 1957, art. 89C, § 4; 1984, ch. 296, § 2.)

Cases

In determining whether and to what extent a duty of support is imposed or imposable, ordinarily it is the law of the responding State, and not the law of the initiating State, which governs. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

§ 10.305. Interstate Rendition.

(a) Powers of Governor. The Governor of this State may:

(1) Demand of the Governor of any other State the surrender of any person found in that State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) Surrender on demand by the Governor of any other State any person found in this State who is charged in that State with the crime of failing to provide for the support of a person in the other State.

(b) Provisions as to location of person to be extradited. Provisions for extradition of criminals not inconsistent with this subtitle apply to any demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled from that State. The demand, the oath, and any proceedings for extradition in accordance with this section need not state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (An.C. 1957, art. 89C, § 5; 1984, ch. 296, § 2.)

§ 10.306. Relief from Extradition.

(a) Inquiry as to civil action before making demand. Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any State's Attorney of this State to satisfy the Governor that the obligee brought an action for the support under this subtitle at least 60 days before, or that the bringing of an action would be of no avail.

(b) Inquiry as to civil action after receiving demand. When under this or a substantially similar act, a demand is made on the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call on any State's Attorney to investigate or assist in investigating the demand, and to report to the Governor whether any action for support has been brought under this subtitle or would be effective.

(c) Delay in honoring demand to permit action to be brought. If an action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of action for support.

(d) Where person demanded has prevailed in civil action. If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) Effect of compliance with support order. If an action for support has been brought and in that action the person demanded is subject to a support order, the Governor may decline to honor the demand, so long as the person demanded is complying with the support order.

HISTORY: (An.C. 1957, art. 89C, § 6; 1984, ch. 296, § 2.)

Cases

Cited in Pennsylvania ex rel. Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954).

§ 10.307. Enforceable Duties; Presumption of Presence of Obligor in Responding State.

Duties of support applicable under this subtitle are those imposed under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (An.C. 1957, art. 89C, § 7; 1984, ch. 296, § 2.)

Cases

Duty of support imposable by law is one arising out of relationship: A duty of support to be adjudicated. Commonthwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

In determining whether and to what extent a duty of support is imposed or imposable, ordinarily it is the law of the responding State, and not the law of the initiating State, which governs. Id.

Decree may circumscribe obligation for support for either or both parents, thus leaving no obligation "imposed or imposable" under this section. Chance v. LaPausky, 402 A.2d 1329 (Md., 1979).

Where decree avoiding the support obligation is not appealed before it becomes enrolled, the propriety of that decree is beyond the jurisdiction of the court, and there is no duty to support under this article. Id.

In Maryland, a court can enforce a decree of another State, as to alimony both accrued and to accrue, and may use for its enforcement the same equitable remedies and sanctions it could use to enforce a decree it had duly entered in the first instance, even as the legislature has said it may use such remedies and sanctions to enforce orders of support under the Uniform Reciprocal Enforcement of Support Act. McCabe v. McCabe, 123 A.2d 447 (Md., 1956); Harris v. Harris, 132 A.2d 597 (Md., 1957).

§ 10.308. Remedies of State or Political Subdivision Providing Support.

Whenever this State or political subdivision of this State provides support to an obligee, it has the same right to invoke the provisions of this subtitle as the obligee to whom the support was provided for the purpose of securing reimbursement of expenditures made and of obtaining continuing support

HISTORY: (An.C. 1957, art. 89C, § 8; 1984, ch. 296, § 2.)

Cases

Purpose of article.

One of the purposes of this article is to provide liberal enforcement in this State of the claims of nonresident parents and children entitled to support, and the claims of out-of-State welfare departments which have made support payments to such nonresident parents and children. Commonwealth ex rel. Halsey v. Autry, 293 Md. 53, 441 A.2d 1056 (1982).

Conjunctive prerequisite of obtaining continuing support for the purpose of securing reimbursement in this section does not enlarge the expressed purpose of this article beyond enforcement of existing obligations. Chance v. LaPausky, 43 Md.App. 84, 402 A.2d 1329 (1979).

Availability of remedies.

The remedies in this article are available even though a Maryland court has granted a decree divorcing the resident obligor. Chance v. LaPausky, 43 Md.App. 84, 402 A.2d 1329 (1979).

§ 10.309. Duties of Support Enforceable by Petition.

All duties of support, including the duty to pay arrearages, are enforceable by petition regardless of the relationship between the obligor and obligee.

HISTORY: (An.C.1957, art. 89C, § 9; 1984, ch. 296, § 2.)

Cases

Proceedings should be in equity.

Proceedings under this article for the enforcement of support should be in equity and not at law. Pennsylvania ex rel. Warren v. Warren, 204 Md. 467, 105 A.2d 488 (1954); McCabe v. McCabe, 210 Md. 308, 123 A.2d 447 (1956). Proceedings under this article are equitable actions. Abb v. Crossfield, 23 Md.App. 232, 326 A.2d 234 (1974).

§ 10.310. Jurisdiction.

Jurisdiction of all civil enforcement proceedings under this subtitle is vested in the circuit court for any county and juvenile courts having jurisdiction over the enforcement of laws respecting duties of support.

HISTORY: (An.C. 1957, art. 89C, § 10; 1984, ch. 296, § 2.)

§ 10.311. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information that may help in locating or identifying the obligor including a

photograph of the obligor, a description of any distinguishing marks of the obligor, other names and aliases by which the obligor has been or is known, the name of the obligor's employer, the obligor's fingerprints, or the obligor's Social Security number.

HISTORY: (An.C. 1957, art. 89C, § 11; 1984, ch. 296, § 2.)

§ 10.312. Petition by Legal Custodian of Minor Obligee.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (An.C. 1957, art. 89C, § 13; 1984, ch. 296, § 2.)

§ 10.313. Duty of Court of this State as Initiating State.

(a) Transmission of copies of petition, etc., to responding State. If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction over the obligor or the obligor's property, the court shall so certify and shall have 3 copies of the petition and its certificate and 1 copy of this subtitle sent to the court of the responding State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall have the copies sent to the State information agency or other proper official of the responding State, with a request that it send them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

(b) Representation of administration. If the administration or a person whom the administration approves for child support services is the petitoner, the petitioner shall be represented as provided in § 10.115 of this Title.

(c) Obligee may be relieved of fees and costs. The court of this State acting as an initiating State may discharge all duties imposed by this subtitle without fees or other costs to the obligee.

HISTORY: (An.C. 1957, art. 89C, § 14; 1984, ch. 29, § 2.)

§ 10.314. Payment of Fees and Costs.

A court of this State acting either as an initiating State or a responding State may direct that any part of or all fees and costs incurred in this State, including fees for filing, service of process, seizure of property, and stenographic service of both obligee and obligor or either, be paid by the obligor or by the county.

HISTORY: (An.C. 1957, art. 89C, § 15; 1984, ch. 296, § 2.)

§ 10.315. Obtaining Body of Obligor by Appropriate Process.

When the court of this State, acting either as an initiating State or a responding State, has reason to believe that the obligor may flee the jurisdiction, it may:

(1) As an initiating State, request in its certificate that the court of the responding State obtain the body of the obligor by appropriate process if that is permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the obligor by appropriate process.

HISTORY: (An.C. 1957, art. 89C, § 16; 1984, ch. 296, § 2.)

§ 10.316. State Information Agency.

The administration is the State Information Agency under this subtitle and shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this subtitle and send the list to the State Information Agency of every other State that has adopted this or a substantially similar act;

(2) Maintain a register of lists received from other States and send copies of the lists as soon as possible after receipt to every court in this State having jurisdiction under this subtitle; and

(3) Send to the court in this State having jurisdiction over an obligor or an obligor's property any petition, certificate, copy of acts, or other document that it receives from courts or information agencies of other States.

HISTORY: (An.C. 1957, art. 89C, § 17; 1984, ch. 296, § 2.)

§ 10.317. Duty of Court and Officials of this State as Responding State.

(a) Duty of clerk. After the court of this State acting as a responding State has received copies of the petition, certificate, and act from the court of the initiating State, the clerk of the court shall docket the case and give notice of this action to the obligee's representative.

(b) Representation for obligee. If the complainant or petitioner is a public agency to which support rights have been assigned or an individual whose petition is brought as part of child support recovery services of a public agency, the complainant or petitioner shall be represented as provided in § 10.115 of this title. In any other case, the State's Attorney shall represent the obligee.

(c) Diligent prosecution. The obligee's representative shall prosecute the case diligently. The representative shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the obligor or the obligor's property and shall request the court to set a time and place for a hearing.

HISTORY: (An.C. 1957, art. 89C, § 18; 1984, ch. 296, § 2.)

§ 10.318. Duty of Obligee's Representative When Jurisdiction Not Obtained.

(a) Request for continuance. The obligee's representative, on the representative's own intiative, shall use all available means to trace the obligor or the obligor's property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain

jurisdiction, the obligee's representative shall inform the court of what has been done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(b) Obligor or property in another county or State. If the obligor or the obligor's property is not found in the county and the obligee's representative discovers by any means that the obligor or the obligor's property may be found in another county in this State or in another State, the representative shall inform the court and the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county, to a court in the other State, or to the Information Agency or other proper official of the other State, with a request that it forward the documents to the proper court. The court of the other county and any court of this State receiving the documents, and the obligee's representative, then have the same powers and duties under this subtitle as if the documents had been originally addressed to them. When the clerk of a court of this State forwards documents to another court or to an agency or official of another State, the clerk immediately shall notify the court from which documents came.

(c) No information as to whereabouts of obligor. If the obligee's representative has no information as to the whereabouts of the obligor or the obligor's property, the representative shall inform the initiating court.

HISTORY: (An.C. 1957, art. 89C, §19; 1984, ch. 296, § 2.)

§ 10.319. Continuance.

If the obligee is absent from the responding State and the obligor presents evidence that constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (An.C. 1957, art. 89C, § 20; 1984 ch. 296, § 2.)

§ 10.320. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife do not apply to proceedings under this subtitle. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (An.C. 1957, art. 89C, § 21; 1984, ch. 296, § 2.)

Cases

Admissions of mother as to paternity of child.

This section does not render admissions of a mother as to the paternity of her child admissible in a prosecution of her husband for nonsuport of the child. Dayhoff v. State, 109 A.2d 760 (Md., 1954).

Compliance with Lord Mansfield Rule not required.

The competence of husband and wife to testify to any relevant matter, including parentage, is not conditioned upon prior compliance with the Lord Mansfield Rule.

Altemus v. Altemus, 18 Md.App. 273, 306 A.2d 581 (1973). The Lord Mansfield Rule was superseded by this section. Abb v. Crossfield, 23 Md.App. 232, 326 A.2d 234 (1974).

§ 10.321. Rules of Evidence.

In any hearing under this subtitle, the court is bound by the same rules of evidence that bind the courts of common-law jurisdiction in this State.

HISTORY: (An.C. 1957, art. 89C, § 22; 1984, ch. 296, § 2.)

§ 10.322. Order of Support.

If the court of this State, when this is the responding State, finds a duty of support, the court may:

(1) Order the obligor to provide support or reimbursement for suport; and

(2) Subject the property of the obligor to the order.

HISTORY: (An.C. 1957, art. 89C, § 23; 1984, ch. 296, § 2.)

Cases

In determining whether and to what extent a duty of support is imposed or imposable, ordinarily it is the law of the responding State, and not the law of the initiating State, which governs. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

Responding State court has authority to issue independent order fixing an amount of support different from that previously ordered by a court. Id.

Whether a foreign State court's order vacating its support order be viewed as a nullifying order or as an order affecting support, the Maryland court, acting as the responding State court in a Uniform Reciprocal Enforcement of Support Act proceeding has the authority to enter an order, if warranted by the child's needs, requiring the father to pay child support. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

Decree may circumscribe obligation for support for either or both parents. Chance v. LaPausky, 402 A.2d 1329 (Md., 1979).

§ 10.323. Responding State To Send Copies to Initiating State.

The court of this State, when this is the responding State, shall send a copy of all support orders to the court of the initiating State.

HISTORY: (An.C. 1957, art. 89C, § 24; 1984, ch. 296, § 2.)

§ 10.324. Additional Powers of Court.

In addition to any other powers set forth in this subtitle, a court of this State, when this is the responding State, may subject the obligor to the terms and conditions that the court deems proper to assure compliance with its orders and in particular may:

(1) Require the obligor to provide recognizance in the form of a cash deposit or bond of a character and amount proper to assure payment of any amount due;

(2) Require the obligor to make payments at specified intervals to the clerk of the court, the administration, or other designated local agency for the purpose of collecting payments of the obligor and to report personally to the clerk, the administration, or the local agency as the court may direct; and

(3) Punish an obligor who violates any order of the court to the same extent as provided by law for contempt of the court in any other matter.

HISTORY: (An.C. 1957, art. 89C, § 25; 1984, ch. 296, § 2.)

Cases

Where the court is concerned solely with the child's needs, it is proper to apply the general principle that a responding State court in a Uniform Reciprocal Enforcement of Support Act proceeding has the authority to consider child support matters and to enter whatever orders are proper, not only when a previous order of child support does not exist, but also when an order affecting child support has been entered in a prior judicial proceeding. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

The court in a uniform reciprocal enforcement of support action has whatever equitable powers are necessary to effectuate the purpose of that act. Abb v. Crossfield, 326 A.2d 234 (Md., 1974).

§ 10.325. Additional Duties of the Court When Acting as a Responding State.

The court of this State, when acting as a responding State, has the following duties, which may be carried out through the clerk of the court, the administration, or a designated local agency:

(1) On the receipt of a payment made by the obligor in accordance with any order of the court or otherwise, to send the payment promptly to the court of the initiating State; and

(2) On request, to provide to the court of the initiating State a certified statement of all payments made by the obligor.

HISTORY: (An.C. 1957, art. 89C, § 26; 1984, ch. 296, § 2.)

Cases

Where the court is concerned solely with the child's needs, it is proper to apply the general principle that a responding State court in a Uniform Reciprocal Enforcement of Support Act proceeding has the authority to consider child support matters and to enter

whatever orders are proper, not only when a previous order of child support does not exist, but also when an order affecting child support has been entered in a prior judicial proceeding. Commonwealth ex rel. Halsey v. Autry, 441 A.2d 1056 (Md., 1982).

§ 10.326. Additional Duty of the Court When Acting as an Initiating State.

The court of this State, when acting as an initiating State, shall receive and disburse promptly all payments made by the obligor or sent by the court of the responding State. This duty may be carried out through the clerk of the court, the administration, or a designated local agency.

HISTORY: (An.C. 1957, art. 89C, § 27; 1984, ch. 296, § 2.)

§ 10.327. Proceedings Not To Be Stayed.

A proceeding under this subtitle may not be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution, habeas corpus, or custody.

HISTORY: (An.C. 1957, art. 89C, § 28; 1984, ch. 296, § 2.)

§ 10.328. Application of Payments.

An order of support issued by a court of this State when acting as a responding State does not supersede any other order of support. Amounts paid for a particular period in accordance with either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (An.C. 1957, art. 89C, § 29; 1984, ch. 296, § 2.)

§ 10.329. Effect of Participation in Proceedings.

Participation in any proceedings under this subtitle does not confer on any court jurisdiction over any of the parties thereto in any other proceeding.

HISTORY: (An.C. 1957, art. 89C, § 30; 1984, ch. 296, § 2.)

§ 10.330, 10.331. Reserved.

Part II: Registration of Foreign Support Orders.

§ 10.332. Additional Remedies Given Obligee.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in this Part II of this subtitle.

HISTORY: (An.C. 1957, art. 89C, § 31; 1984, ch. 296, § 2.)

§ 10.333. Foreign Order May Be Registered.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this Part II of this subtitle.

HISTORY: (An.C. 1957, art. 89C, § 32; 1984, ch. 296, § 2.)

§ 10.334. Registry of Foreign Support Orders.

The clerk of the court shall maintain a registry in which the clerk shall record foreign support orders.

HISTORY: (An.C. 1957, art. 89C, § 33; 1984, ch. 296, § 2.)

§ 10.335. Representation of Obligee.

If the obligee is a public agency to which support rights have been assigned or an individual whose request for registration is brought as part of a child support enforcement services of a public agency, the obligee shall be represented as provided in § 10.115 of this title. In any other case in which this State is acting as a rendering State or a registering State, the State's attorney shall represent the obligee.

HISTORY: (An.C. 1957, art. 89C, § 33A; 1984, ch. 296, § 2; 1985, ch. 478, § 1.)

§ 10.336. Registration Procedure.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications of it. The foreign support order is registered on the filing of the petition subject only to subsequent order of confirmation.

HISTORY: (An.C. 1957, art. 89C, § 34; 1984, ch. 296, § 2.)

Cases

The registration provisions of the Uniform Reciprocal Enforcement of Support Act are not the exclusive means of initiating, in Maryland, the enforcement of a foreign alimony decree. Barrell v. Barrell, 415 A.2d 579 (Md., 1980).

§ 10.337. Procedure After Registration.

The procedure to obtain jurisdiction over the person or property of the obligor is as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appeals and a hearing is held, the court shall decide the issues including the amounts remaining unpaid.

HISTORY: (An.C. 1957, art. 89C, § 35; 1984, ch. 296, § 2.)

§ 10.338. Effect and Enforcement of Confirmed Order.

The support order as confirmed has the same effect and may be enforced as if originally entered in a court of this State. The procedures for enforcement of the order are as in civil cases, including the power to punish the obligor for contempt as in the case of other orders for payment of alimony, maintenance, or support entered in this State.

HISTORY: (An.C. 1957, art. 89C, § 36; 1984, ch. 296, § 2.)

§ 10.339. Uniform Interpretation of Subtitle.

This subtitle shall be construed to effectuate its general purpose to make uniform the law of those States that enact it.

HISTORY: (An.C. 1957, art. 89C, § 38; 1984, ch. 296, § 2.)

§ 10.340. Short Title.

This subtitle shall be cited as the "Maryland Uniform Reciprocal Enforcement of Support Act."

HISTORY: (An.C. 1957, art. 89C, § 39; 1984, ch. 296, § 2.)

MASSACHUSETTS
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MASSACHUSETTS

MASS. GEN. LAWS ANN. CH. 273A §§ 1 to 17

§ 1. Definitions.

In this chapter, unless otherwise expressly provided or the context otherwise requires, the following words and phrases shall have the following meanings:

"COURT," a District Court of this Commonwealth and, when the context requires, the court of any other State as defined in a reciprocal law substantially similar to this chapter.

"DUTY OF SUPPORT," any duty of support imposed by law, or by any court order, decree or judgment, whether interlocutory or final, whether incident to a proceeding for divorce, legal separation, separate support, or otherwise.

"INITIATING STATE," a State in which a proceeding pursuant to the provisions of this chapter or a reciprocal law substantially similar to this chapter is commenced.

"OBLIGEE," any person to whom a duty of support is owed.

"OBLIGOR," any person owing a duty of support.

"RESPONDING STATE," a State in which a proceeding pursuant to the proceeding in the initiating State is or may be commenced.

"STATE," includes any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any other jurisdiction in which this or a substantially similar reciprocal law has been enacted and with which the Commonwealth is authorized to enter into such a reciprocal agreement.

HISTORY: (1951, 657 § 1; 1954, 556, § 1; 1979, 452, approved Aug. 6, 1979, eff. 90 days thereafter.)

Cases

Purpose of Act.

Uniform Reciprocal Enforcement of Support Act was developed in response to problems posed for interstate enforcement of support by increased mobility of the American population. Bushnell v. Bushnell, 472 N.E.2d 240 (Mass., 1984).

The purpose of the uniform act is to provide an effective procedure to compel performance by one under a duty to support dependents in another State, and the court has power to make a valid order prospective in operation based upon the respondent's duty to support his children in the foreign State. Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 469.

The purpose of the Uniform Reciprocal Enforcement of Support Act is to provide an effective procedure to compel performance by a person who is under a duty to support dependents in another State. Keene v. Toth, 335 Mass. 591, 141 N.E.2d 509.

This section imposes a duty on the father to support his minor children, no matter where they have been taken by the mother. Alexander v. Alexander, 20 Mass.App.Dec. 20.

A father is under a duty to support his children, and he is not relieved of this duty for the reason that they were removed from his custody without acquiescence on his part and without any decree and reference to their custody. Parmelee v. Parmelee, 20 Mass.App.Dec. 26.

Proceedings civil in character.

Where case resulted in adjudication of defendant as the father of an illegitimate child together with his being placed on probation and ordered to make payments toward the child's support and the mother's confinement expenses but did not involve the imposition of a criminal penalty simpliciter, defendant had no standing to complain of the alleged unconstitutionality of statute making it a misdemeanor for a person who was not husband of woman to get her with child while not imposing a criminal penalty on a woman. Com. v. Chapman, 317 N.E.2d 830 (Mass., 1974).

Proceedings under this chapter are civil in character, and not criminal in nature, and hence there is no error in requiring a respondent to take the stand and testify in the proceeding. Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 919.

As the proceedings are civil and not criminal, requests for rulings relating to rights guaranteed by art. 12 of the Declaration of Rights of the Massachusetts Constitution were properly denied. Id.

Remedies under Act are in addition to other remedies.

Although United States is subject to process to enforce child support obligations, the enforcing court must have jurisdiction to enter valid judgment and order. Morrill v. Tong, 453 N.E.2d 1221 (Mass., 1983).

By virtue of the instant section, the remedies provided by the instant chapter are in addition to and not in substitution for any other remedy. Helgesson v. Helgesson (DC) 196 F.Supp.42, aff'd (CA1) 295 F.2d 37.

For a proceeding under this chapter which was initiated in Maine, see Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 919.

Proceedings under this chapter are civil in character and not criminal in nature. Souza v. Kokoszka (1966) 36 Mass.App.Dec. 199.

§ 2. Remedies To Be Additional to Others.

The remedies provided in this chapter are in addition to and not in substitution for any other remedy.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

Remedies under Act are in addition to other remedies.

Even where putative father is living and denies that he is father, paternity may be decided in a civil proceeding under Uniform Reciprocal Enforcement of Support Act, (ch. 273A, § 1 et seq.) without complying with strictures of ch. 273, § 1 et seq. governing prosecution for desertion, nonsupport and illegitimacy. Doe v. Roe, 473 N.E.2d 719 (Mass., 1985).

Uniform Reciprocal Enforcement of Support Act does not displace rules of civil procedure. Bushnell v. Bushnell, 472 N.E.2d 240 (Mass., 1984).

By virtue of the instant section, the remedies provided by the instant chapter are in addition to and not in substitution for any other remedy. Helgesson v. Helgesson (DC) 196 F.Supp.42, aff'd (CA1) 295 F.2d 37.

By virtue of instant section, remedy under ch. 273A not dependent upon compliance with procedures provided by other statutes in responding State for enforcement of same support obligation. M. v. W. (Mass) 227 N.E.2d 469.

Decree under Act not bar to subsequent action in Federal Court.

Where a former wife who was entitled to alimony under a California decree brought a petition under the instant chapter in the Middlesex probate court and the court found that she was not in need of or entitled to support but made a support decree relative to a minor child, the proceedings and decree in the Middlesex court did not bar a subsequent action by the wife brought in a Federal court to collect unpaid alimony under the California decree because the remedies provided by the instant chapter are in addition to, and not in substitution for, any other remedy. Helgesson v. Helgesson (DC) 196 F.Supp. 42, aff'd (CA1) 295 F.2d 37.

For a summary of the provisions of the instant section, see M. v. W. (Mass) 227 N.E.2d 469.

§ 3. Duty of Support and Enforcement Laws Binding; Regardless of Presence or Residence of Obligee.

The duty of support imposed by the laws of the Commonwealth or by the laws of the State where the obligee was present when the failure to support commenced as provided in § 4, and the laws relative to the enforcement thereof, bind the obligor regardless of the presence or residence of the obligee.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

Obligor bond regardless of presence or residence of obligee.

Reciprocal nonsupport petition allegedly filed by former wife with Massachusetts District Court, which resulted in order requiring former husband to pay $500 per month in support, similar to Arizona judgment, had no effect upon 1972 separate support order requiring former husband to pay $850 in support payments and was irrelevant to a change of circumstances. Kennedy v. Kennedy, 457 N.E.2d 1133 (Mass., 1983).

Where Pennsylvania court, in support enforcement proceeding, had recently determined that husband should pay $400 a month as support for his wife and children, Massachusetts probate judge could reasonably rely on recent Pennsylvania decree as showing that husband was able to afford, and should pay, at least that amount to wife. Blitzer v. Blitzer (1972) 282 N.E.2d 918, 361 Mass. 780.

Evidence.

In proceeding filed by divorced wife against her former husband pursuant to Uniform Reciprocal Enforcement of Support Act, wherein defendant argued that the pleadings disclosed on their face that he did not owe plaintiff any duty of support, evidence supported finding that defendant owed duty of support in an amount of $20 per week. Mazzocco v. Mazzocco (1979) 392 N.E.2d 852, 378 Mass. 796.

Decisions in other States; in general.

Fact that former wife's support petition filed in Massachusetts pursuant to the Uniform Reciprocal Enforcement of Support Act was summarily dismissed did not, under doctrine of res judicata, bar former wife's subsequent contempt action in New Hampshire against former husband for nonpayment of alimony, particularly in view of fact that another Massachusetts action instituted by former wife after the summary dismissal was itself dismissed on basis of forum non conveniens and upon representations by former husband that he would submit to jurisdiction of the New Hampshire courts. Strobel v. Strobel, 461 A.2d 558 (N.H., 1983).

Under this section, the duty of support and the laws relative to enforcement bind the obligor regardless of the presence or residence of the obligee. Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 919.

For a summary of the provisions of the instants section, see M. v. W. (Mass) 227 N.E.2d 469.

§ 4. Duties of Support Which Are Enforceable.

Duties of support enforceable under this chapter are those imposed under the laws of any State in which the alleged obligor was present during the period for which support is sought or in which the obligee was present when the failure to support commenced.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

In general.

In proceeding filed by divorced wife against her former husband pursuant to Uniform Reciprocal Enforcement of Support Act, wherein defendant argued that the pleadings disclosed on their face that he did not owe plaintiff any duty of support, evidence supported finding that defendant owed duty of support in an amount of $20 per week. Mazzocco v. Mazzocco, 392 N.E.2d 852 (Mass., 1979).

Massachusetts law applicable where respondent is Massachusetts resident.

In a proceeding brought to enforce a duty to support a child residing in New York against a respondent residing in Massachusetts, although the instant section might be interpreted as permitting application of New York law, Massachusetts law is to be applied in deciding the case. M. v. W. (Mass) 227 N.E.2d 469.

For a summary of the provisions of the instants section, see M. v. W. (Mass) 227 N.E.2d 469.

§ 5. Right of State, Etc.; Furnishing Support To Commence Proceedings.

Whenever any State or political division thereof has furnished support to an obligee it shall have the same right to commence proceedings under this chapter, in the name of the obligee, as the obligee to whom the support was furnished, so that it may secure reimbursement for expenditures so made, and to obtain continuing support.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

§ 6. Enforcement of Duty; Venue; Jurisdiction; Service of Process.

The duty of support shall be enforceable by petition filed in a District Court, irrespective of the relationship between the obligor and the obligee. Any proceeding hereunder shall be commenced in a District Court within whose judicial district the obligee is an inhabitant or a resident. The court shall enforce all duties of support under this chapter notwithstanding that another court in the Commonwealth or in any other State has made a support order and has continuing jurisdiction. Any officer authorized under the laws of the Commonwealth to serve criminal process may serve any process under this chapter.

HISTORY: (1951, 657, § 1; 1954, 556 § 1; 1958, 239, § 1; 1965, 17, § 1.)

Cases

In general.

Massachusetts District Court had jurisdiction to consider mother's petition under Uniform Reciprocal Enforcement of Support Act, though mother moved with children to New York following Massachusetts divorce and brought action in New York and though mother might have sought relief in probate and family court which granted divorce and awarded her custody. Canty v. Canty, 465 N.E.2d 770 (Mass., 1984).

On mother's petition under Uniform Reciprocal Enforcement of Support Act, father did not take reasonable steps to request draft report by requesting report and draft report 31 days after judgment was entered. Id.

Document filed by father purporting to reserve his right to request report, or take certain other action, following order on mother's petition under Uniform Reciprocal Enforcement of Support Act that father provide weekly support payments, did not alter father's duty seasonably to request report, if he wished review of order. Canty v. Canty, 465 N.E.2d 770 (Mass., 1984).

Father had no right to postjudgment removal to superior court of mother's petition under Uniform Reciprocal Enforcement of Support Act. Id.

It was improper for probate court, which reduced support arrearages from $57,050 to $27,050, to reconsider merits of 1972 separate support order and conclude that it was excessive when entered, in that former husband chose not to have his full "day in court" in 1972 to contest order because he incorrectly assumed that Massachusetts probate court lacked jurisdiction over him. Kennedy v. Kennedy, 457 N.E.2d 1133 (Mass., 1983).

Although United States is subject to process to enforce child support obligations, the enforcing court must have jurisdiction to enter valid judgment and order. Morrill v. Tong, 453 N.E.2d 1221 (Mass., 1983).

Fact that former wife's support petition filed in Massachusetts pursuant to the Uniform Reciprocal Enforcement of Support Act was summarily dismissed did not, under doctrine of res judicata, bar former wife's subsequent contempt action in New Hampshire against former husband for nonpayment of alimony, particularly in view of fact that another Massachusetts action instituted by former wife after the summary dismissal was itself dismissed on basis of forum non conveniens and upon representations by former husband that he would submit to jurisdiction of the New Hampshire courts. Strobel v. Strobel, 461 A.2d 558 (N.H., 1983).

In proceeding filed by divorced wife against her former husband pursuant to Uniform Reciprocal Enforcement of Support Act, wherein defendant argued that the pleadings disclosed on their face that he did not owe plaintiff any duty of support, evidence supported finding that defendant owed duty of support in an amount of $20 per week. Mazzocco v. Mazzocco, 392 N.E.2d 852 (Mass., 1979).

Purpose of criminal contempt is punitive; its aim is to vindicate the court's authority and to punish the condemnor for doing a forbidden act or for failing to act as ordered. Sodones v. Sodones, 314 N.E.2d 906 (Mass., 1974).

Purpose of civil contempt is remedial; its aim is to coerce the performance of a required act by the disobedient party for the benefit of the agreed complainant. Id.

When person judged in civil contempt is ordered to pay a compensatory sum of money he may not be sentenced to prison if he shows that he is unable to comply. Id.

Even where support order was originally granted in divorce proceeding, District Court had jurisdiction in proceeding to order support payments, and the jurisdiction of the probate court was not exclusive. Kesten v. Frothingham (1968) 40 Mass.App.Dec. 111.

Reforwarding of petition to proper District Court.

Where a petition was forwarded by the initiating State to a District Court for a district in which the respondent did not reside, but the papers where then forwarded to the District Court within whose jurisdiction the obligee was an inhabitant or resident under the instant section, the proceeding was properly commenced in the latter court. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

Summary of procedure for enforcing duty to support child.

The procedure under the instant chapter for the enforcement of a duty to support a child residing outside Massachusetts was summarized as follows: "(1) The appropriate

court of the initiating State, that is the State . . . of residence of the obligee, here the child (see § 6), determines that there exists probable cause for enforcement of a right of support under c 273A. See § 8; . . . (2) That court transmits to the appropriate court of the responding State the petition and other appropriate documents; (3) The proper court in the responding State (here Mass.) proceeds to 'a speedy hearing.' See § 9. It then determines (§ 10) whether a 'duty of support' exists; (4) If 'the court finds that such a duty of support' exists, it may issue an appropriate order." M. v. W. (Mass) 227 N.E.2d 469.

Petition assumed to be in compliance with statute.

Where a petition under this chapter is not in the record, it will be assumed that the petition as filed in the foreign State complied with the requirements of this section and of § 6 before transmittal to the District Court in this State under § 8. Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 919.

For a summary of the provisions of the instant section, see M. v. W. (Mass) 227 N.E.2d 469.

Concurrent jurisdiction.

This section makes it clear that, notwithstanding that another court has made a support order and has continuing jurisdiction, its jurisdiction is not exclusive and the District Court is expressly also granted jurisdiction to enforce all duties of support, so that the local District Court had jurisdiction under the Uniform Reciprocal Enforcement of Support Act to make an order for the support of a child living in a foreign State where the proceeding was initiated, even though a local probate court had made an order for the custody and support of the child. Kesten v. Frothingham (1968) 40 Mass.App.Dec. 111.

§ 7. Petition; Contents, Etc.

The petition shall be verified and shall State the name and, so for as known to the petitioner, the address and circumstances of the respondent, and the dependents for whom the duty of support is sought to be enforced, and all other pertinent information.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

Petition assumed to be in compliance with statute.

Where a petition under this chapter is not in the record, it will be assumed that the petition as filed in the foreign State complied with the requirements of this section and of § 6 before transmittal to the District Court in this State under § 8. Phillips v. Phillips. 336 Mass. 561, 146 N.E.2d 919.

Typographical errors in petition not fatal.

Because the purpose of the Uniform Reciprocal Enforcement of Support Act is to obtain support for dependents and "not to provide a procedural field day for defaulting husbands and fathers," typographical errors, in some places, as to the name of the petitioner are not fatal. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

Petition must show residence of children.

Where support for children is sought, it would not be enough for a verified petition under the instant section to show only the residence of the wife, but it is essential that such petition show the residence or domicile of the children, and where the verified petition forwarded from another State does not show the residence of the children, no order for support will be made in Massachusetts until further proceedings are had in the initiating State to determine the essential facts. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

Verification by clerk of court sufficient.

Where the petition, testimony, and certificate forwarded by the initiating State were certified by the clerk of the court in which the proceedings were had in the initiating State, and reciprocal certification of the judge and the clerk to the office and signature of the other were attached, the verification was a compliance with the instant section, and verification by oath taken by a notary public was not required. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

§ 8. Court of Responding State Having Jurisdiction; Certificate; Copies of Papers Transmitted.

If the court finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support, and that a court of a responding State may obtain jurisdiction of the respondent or his property, it shall so certify, and shall cause certified copies of the petition and the certificate to the court of the responding State.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

In general.

Under Dist./Mun.Cts.R.Civ.P.Rule 64, plaintiff in nonsupport proceeding had ten days to appeal summary judgment, holding that no marriage existed between the parties, and the ten-day period commenced on date judgment was entered, as against allegation that notice of judgment was not received by initiating court under Uniform Reciprocal Enforcement of Support Act (ch. 273A, § 1 et seq.) until appeal period had elapsed. Bushnell v. Bushnell, 472 N.E.2d 240 (Mass., 1984).

In action under Uniform Reciprocal Enforcement of Support Act (ch. 273A, § 1 et seq.), the appellate division, presented only with questions whether judge improperly allowed plaintiff's motion for relief from judgment and improperly stayed proceedings in the District Court, had only power to decide questions properly reported to it, and erroneously exceeded its proper scope of review by ruling on validity of marriage, an issue not reported to it. Id.

Summary of procedure for enforcing duty to support child.

The procedure under the instant chapter for the enforcement of a duty to support a child residing outside Massachusetts was summarized as follows: "(1) The appropriate court of the initiating State, that is the State . . . of residence of the obligee, here the child (see § 6), determines that there exists probable cause for enforcement of a right of

support under ch. 273A. See § 8; . . . (2) That court transmits to the appropriate court of the responding State the petition and other appropriate documents; (3) The proper court in the responding State (here Mass.) proceeds to 'a speedy hearing.' See § 9. It then determines (§ 10) whether a 'duty of support' exists; (4) If 'the court finds that such a duty of support' exists, it may issue an appropriate order." M. v. W. (Mass) 227 N.E.2d 469.

Findings as to duty of support not required.

The instant section does not require the judge of the court in the initiating State to make findings that the respondent owes a duty of support and that a court of a responding State may obtain jurisdiction of the respondent owes a duty of support and that a court responding State may obtain jurisdiction of the respondent or his property, nor to show such findings in his certificate, in order to comply with the instant section, because the instant section merely prescribes a procedure in the nature of finding probable cause, namely, the allegations of the petition, warrant further proceedings, and that the respondent or his property may be within the jurisdiction of the responding State, and recitals to that effect are sufficient. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

Reforwarding of petition to proper District Court.

Where the initiating State forwarded a petition for support to a District Court for a district in which the respondent did not reside, but the papers where then forwarded to a District Court in which the respondent resided within the meaning of § 6, supra, such action was a compliance with that part of the instant section which requires that the court of the initiating State shall cause certified copies of the petition and the certificate to be transmitted to the court of the responding State. Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

Petition assumed to be in compliance with statute.

Where a petition under this chapter is not in the record, it will be assumed that the petition as filed in the foreign State complied with the requirements of this section and of § 6 before transmittal to the District Court in this State under § 8. Phillips v. Phillips, 336 Mass. 561, 146 N.E.2d 919.

§ 9. Proceedings on Receipt of Copies of Papers From Court of Initiating State; Proof of Issues.

When the District Court receives from a court of an initiating State certified copies of the petition, or other pleadings containing the essential allegations of a petition under §§ 6 and 7 under whatever name it may be known, and the certificate referred to in § 8, it shall docket the cause, take appropriate steps to obtain jurisdiction of the respondent by personal service and schedule the matter of a speedy hearing. It may assign a probation officer to the case. A statement under oath or under the penalties of perjury made by the petitioner and contained in such petition shall so far as relevant constitute prima facie evidence on the issues of the existence of the duties to support defined in §§ 3 and 4, of the fact of failure to provide such support and of the fact of the unreasonableness of such failure.

HISTORY: (1951, 657, § 1; 1954, 556, § 1; 1957, 74; 1960, 42; 1965, 17, § 2.)

Cases

In general.

Action on petition under this chapter would be remanded for a determination as to whether father, who alleged that he suffered a disabling industrial accident and had no present ability to support child, fraudulently disposed of or concealed assets so as to defeat or hinder enforcement of claims of his minor child for support. State of R.I. v. Montijo, Mass.App.Div. 146 (1980).

In proceeding filed by divorced wife against her former husband pursuant to Uniform Reciprocal Enforcement of Support Act, wherein defendant argued that the pleadings disclosed on their face that he did not owe plaintiff any duty of support, evidence supported finding that defendant owed duty of support in an amount of $20 per week. Mazzocco v. Mazzocco (1979) 392 N.E.2d 852, 378 Mass. 796.

Summary of procedure for enforcing duty to support child.

The procedure under the instant chapter for the enforcement of a duty to support a child residing outside Massachusetts was summarized as follows: "(1) The appropriate court of the initiating State, that is the State . . . of residence of the obligee, here the child (see § 6), determines that there exists probable cause for enforcement of a right of support under ch. 273A. See § 8; . . . (2) That court transmits to the appropriate court of the responding State the petition and other appropriate documents; (3) The proper court in the responding State (here Mass.) proceeds to 'a speedy hearing.' See § 9. It then determines (§ 10) whether a 'duty of support' exists; (4) If 'the court finds [that such] a duty of support' exists, it may issue an appropriate order." M. v. W. (Mass) 227 N.E.2d 469.

Obtaining jurisdiction of a respondent by personal service.

Where a petition under the instant chapter was forwarded from New York, the initiating State, to a District Court in Massachusetts in the district in which the respondent resided, and the clerk of the latter court entered the petition as a civil proceeding, and caused to be issued an order of notice, a copy of which was served in hand on the respondent at his legal residence within the jurisdiction of the court, this was a compliance with the instant section, in so far as the District Court was required to "take appropriate steps to obtain jurisdiction of the respondent by personal services." Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

When illegitimacy is a material issue in an enforcement of support proceeding, it may be determined judicially in a proceeding not criminal. Moss v. Wynn (1966) 34 Mass.App.Dec. 147.

Record warranted finding that defendant owed duty of support to wife of $26 per week. Mazzocco v. Mazzocco (1979, Mass) 1979 Adv. Sheets 1856, 392 N.E.2d 852.

§ 10. Commonwealth as Responding State; Order For Support or Reimbursement; Enforcement; Assignment of Wages.

When the Commonwealth is a responding State, and the court finds a duty of support, it may order the respondent to furnish support or reimbursement therefor in a reasonable

amount, and subject the property of the respondent to such order. All other courts of the Commonwealth shall likewise enforce the order and upon doing so shall inform the court first making the order.

When the court makes an order for support on behalf of a spouse or child, and such spouse or child is not covered by a private group health insurance plan, said court shall determine whether the obligor under such order has health insurance on a group plan available to him through an employer or organization that my be extended to cover the spouse or child for whom support is ordered. When said court has determined that the obligor has such insurance, said court shall include in the support order a requirement that the obligor exercise the option of additional coverage in favor of such spouse or child.

Each order for support issued by a court pursuant to this chapter shall include an order directing the obligor to assign a portion of his commission, earnings, salaries, wages, or other periodic income to a person designated by the court in an amount sufficient to comply with such support order. The court may designate any of the following persons or agencies as the assignee: the person entitled to receive such support under the order, the guardian or conservator of such person, the probation office of the court, or where the person entitled to receive such support is a recipient of public assistance, the department of public welfare or the department of social services. If the obligor does not execute an assignment when so ordered, the court shall execute such assignment. Such assignment shall take effect when the obligor has failed to meet two successive required payments of support or, if the court finds that the obligor is likely to default on the support order, the court may order such assignment to be effective immediately.

The chief probation officer of the court, upon application of the person designated by the court to receive payments, shall send a notice by certified or registered mail to the last-known address of any obligor who has made less than full payment for two consecutive scheduled support payments. Such notice shall be sent no later than ten days after the date upon which the application was filed and shall notify the obligor that such assignment shall go into effect fifteen days after the notice was sent. If the obligor requests a hearing within said fifteen day period on the issue of whether such assignment should take affect, the execution of the assignment shall be stayed pending the outcome of the hearing. The court shall hold a hearing pursuant to this section within thirty days of the request. If at the hearing the obligor establishes that extraordinary circumstances prevented him from meeting the requirements of the support orders and that such circumstances are beyond the control of the obligor, the court may order that such assignment not take effect until such time, within the next twelve months, as another support payment is missed or only partially met.

The court shall send a notice of the assignment to the employer to effectuate the assignment and such assignment shall take effect on the next payment of earnings after the employer of the obligor receives notice thereof. The order of assignment shall specify the amount of earnings to be paid to the person supported and shall not exceed the Federal limits on the percentage of an obligor's income which may be assigned for support. The obligor may move to terminate or modify the amount of such assignment at any time for good cause.

The employer may deduct from said earnings a sum not exceeding one dollar as reimbursement for costs incurred. The employer may not discipline, suspend, or discharge an employee because of an assignment executed pursuant to this section. Any employer

who violates this section shall be liable to such employee for all wages and employment benefits lost by the employee from the period of unlawful discipline, suspension, or discharge to the period of reinstatement. Any employer who fails to comply with a wage assignment executed pursuant to this section shall be liable to the party designated by the court to receive such funds for the full amount of the wages assigned.

If the employment of the obligor is terminated, the obligor shall promptly notify the court and the court shall order an assignment of earnings from any subsequent employer. Where an obligor has voluntarily executed a wage assignment and said assignment is submitted to the court, the assignment shall be subject to the provisions of this section. Any judgment or order for support issuing from a court of competent jurisdiction of any State, which has law similar to this section which provides for reciprocity to this Commonwealth, shall have the same force and effect as if the judgment or order originated from a court in the Commonwealth.

Any existing order for support in any case which is brought before a court shall be modified by such court to conform to the provisions of this section.

HISTORY: (1951, 657, § 1; 1954, 556, § 1; 1958, 239, § 2; 1983, 233, § 85, 1983, 233, § 85, approved July 1, 1983; by § 101, eff. July 1, 1983; eff. by act of Governor, July 1, 1983.)

Cases

In general.

Because District Court has given authority to order support if court finds a duty of support imposed by law (ch. 273A, § 10), the District Court does have jurisdiction and implied power to determine whether there is basis for that support, i.e., whether valid marriage existed between the parties. Bushnell v. Bushnell, 472 N.E.2d 240 (Mass., 1984).

Summary of procedure for enforcing duty to support child.

The procedure under the instant chapter for the enforcement of a duty to support a child residing outside Massachusetts was summarizes as follows: "(1) The appropriate court of the initiating State, that is the State . . . of residence of the obligee, here the child (see § 6), determines that there exists probable cause for enforcement of a right of support under ch. 273A. See § 8; . . . (2) That court transmits to the appropriate court of the responding State the petition and other appropriate documents; (3) The proper court in the responding State (here Mass.) proceeds to 'a speedy hearing'. See § 9. It then determines (§ 10) whether a 'duty of support' exists; (4) If 'the court finds that such a duty of support' exists, it may issue an appropriate order." M. v. W. (Mass) 227 N.E.2d 469.

Children's residence immaterial.

A District Court in Massachusetts has the power to make a valid order, prospective in operation, based upon a duty to support owed by the respondent to this children who reside in Virginia and whose custody was awarded to their mother. The fact that the wife obtained the divorce and was awarded custody in the District of Columbia, a jurisdiction which had not adopted the Uniform Act, was immaterial. Keene v. Toth, 335 Mass. 591, 141 N.E.2d 509.

Court empowered to make finding of paternity in contested case.

In a case where the duty of a Massachusetts respondent to support a child residing in New York is sought to be enforced in Massachusetts as the responding State under the instant chapter, where the issue of paternity is contested, the District Court is empowered by the instant section to make a finding of paternity for purposes of the civil proceeding under ch. 273A in much the same manner as would be done in a criminal proceeding under ch. 273, §§ 11-18, such a finding being necessary in order to determine whether a duty of support exists. M. v. W. (Mass) 227 N.E.2d 469.

Appeal from adjudication of paternity in determining duty of support under instant section does not lie to Superior Court under ch. 278, § 18. M-- v. W--, (Mass) 227 N.E.2d 469.

Record warranted finding that defendant owed duty of support to wife of $26 per week. Mazzocco v. Mazzocco (1979, Mass) 1979 Adv. Sheets 1856, 392 N.E.2d 852.

§ 11. Transmittal of Copies of Orders of Local Courts.

The court shall cause to be transmitted to the court of an initiating State a copy of all orders for support or for reimbursement therefor.

HISTORY: (1951, 657, § 1; 1954, 556 § 1.)

§ 12. Terms and Conditions to Assure Compliance with Orders; Attachment of Tax Refunds; Transfer of Paper to Other Courts.

In addition to the foregoing powers, the court, when the Commonwealth is a responding State, may subject the respondent to such terms and conditions as it deems proper to assure compliance with its orders, and may require the respondent to make payments at specified intervals to a probation officer assigned by the court, and punish a respondent who violates any order of the court to the same extent as is provided by law for contempt in any other suit or proceeding. Such court shall also be allowed to request attachments on any tax refund due from the Commonwealth to a respondent who is delinquent in any support order. If the court is unable to find the respondent or his property within its judicial district but discovers that the respondent or his property may be found in the judicial district of another court in the Commonwealth, the court may forward the papers received from the court of the initiating State to such other court and shall inform the court in the initiating State that it has done so. Thereupon such other court shall give a receipt for the papers and thereafter have the duties imposed by this chapter.

HISTORY: (1951, 657, § 1; amended by 1954, 556, § 1; 1958, 239, § 3; 1982, 42, approve April 23, 1982, eff. 90 days thereafter.)

Cases

In proceeding filed by divorced wife against her former husband pursuant to Uniform Reciprocal Enforcement of Support Act, wherein defendant argued that the pleadings disclosed on their face that he did not owe plaintiff any duty of support, evidence supported finding that defendant owed duty of support in an amount of $20 per week. Mazzocco v. Mazzocco, 392 N.E.2d 852 (Mass., 1979).

§ 13. Probation Officer To Transmit Certain Payments to Foreign Court; When.

When, in proceedings under this chapter, the Commonwealth is acting as a responding State, and the probation officer receives payments from a respondent, pursuant to an order of the court or otherwise, he shall forthwith transmit the same to the court of the initiating State, less any amounts which the court may order withheld for counsel fees or expenses authorized under § 15 or elsewhere, and upon request of said court shall furnish a certified statement of all payments made by the respondent.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

§ 14. Probation Officer To Receive and Disburse Certain Payments; When.

The probation officer assigned by the court shall, in proceedings in which the Commonwealth is an initiating State, receive and disburse forthwith to the petitioner all payments made by the respondent or transmitted by the court of the responding State. He may be authorized to commingle funds from two or more respondents in one account.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

§ 15. Fees; Counsel; Probation Officer May Be Assigned; Return of Papers, Etc.; When.

Except as provided by § 15A, when the Commonwealth is the initiating State, the petitioner shall pay no entry fee but shall pay such sum as may be required under the laws of the responding State, such sum being payable after entry of the petition upon verification of the amount in accordance with the rules of the court.

Except as provided by § 15A, when the Commonwealth is the responding State, the petitioner shall in the first instance pay the clerk the sum of two dollars for the service of process upon the responding obligor. The court may, after hearing, order the respondent to reimburse the petitioner for costs or disbursements incurred under this chapter.

If the petitioner is without counsel and it appears to the court that there is need for counsel to represent the petitioner, the court may on its own motion appoint counsel to represent the petitioner and may direct that a reasonable fee, fixed by the court, be paid to counsel out of funds, if any, paid by respondent under court order. Upon receipt of a petition under this chapter, the court may assign the same to a probation officer for supervision.

When papers are sent to a District Court of this Commonwealth under this chapter, and the respondent is not found within the jurisdiction of that court, the said papers and moneys tendered on behalf of the petitioner shall, if it appears from the record or otherwise that the respondent may be found in some other district of the Commonwealth, be transferred to said district, and the initiating court shall be so informed. If there is no indication that the respondent can be found in this Commonwealth, said papers and moneys shall be returned to the initiating court.

HISTORY: (1954, 556, § 1; 1957, 110, § 1; 1965, 20, § 1.)

§ 15A. When Petitioner May Be Excused from Payment of Sum for Service of Process, Etc.

When the Commonwealth is the responding State, the petitioner shall be excused from the payment of the sum for the service of process, except, however, that the petitioner shall not be so excused if the laws of the initiating State do not provide substantially similar process available to a petitioner of this Commonwealth; provided, there is received from said petitioner an affidavit which States (a) that the application is made in good faith and (b) that he is unable to pay said sum and that this inability is due to the fact that his assets do not exceed the value of one hundred dollars apart from clothes, household goods and tools of trade.

HISTORY: (1957, 110, § 2; 1965, 20, § 2.)

§ 16. Unconstitutionality, Etc.; Effect.

If any part, section or subdivision of this chapter or the application thereof to any particular person, persons or conditions is held invalid, unconstitutional or inoperative, the remainder hereof, or the application of any such part, section or subdivision to other persons and conditions, shall not be affected thereby.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

§ 17. Chapter, How Cited; Construction.

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act, and shall be so construed and interpreted as to accomplish its general purpose to make substantially uniform the laws of State enacting like law.

HISTORY: (1951, 657, § 1; 1954, 556, § 1.)

Cases

Chapter will be liberally interpreted.

In accordance with the requirement of the instant section that the instant chapter "shall be so construed and interpreted as to accomplish its general purpose" a restrictive application of its provisions has been avoided, the civil remedies afforded by the statute are not to be narrowly construed, and every effort should be made to render the statute operable. M. v. W. (Mass) 227 N.E.2d 469.

Sufficiency of certificate showing probable cause.

To hold that a certificate under § 8, supra, requires finding of fact by the judge of the forwarding court that the respondent owes a duty of support and that a court of a responding State may obtain jurisdiction over him, rather than the finding of probable cause as to such matters, would hardly be an observance of the instant section which provides that the Reciprocal Support Act "shall be so construed and interpreted as to accomplish its general purposes to make substantially uniform the laws of State enacting like law." Kirby v. Kirby, 338 Mass. 263, 155 N.E.2d 165.

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§ 25.225.1. Short Title.

This Act shall be known and may be cited as the "Uniform Reciprocal Enforcement of Support Act."

Cases

Construction and effect.

Actions under Paternity Act and Uniform Reciprocal Enforcement of Support Act are governed by general court rules except as inconsistent with or modified by such Acts. Washington v. Sherrod, 82 Mich.App. 143.

Uniform Reciprocal Enforcement of Support Act focuses on duty of support and does not contemplate that custodial parent come to responding State in order to defend against claims arising from other domestic relations matters between parties, such matters being properly adjudicated by aggrieved noncustodial party in State of divorce. Brown v. Turnbloom, 89 Mich.App. 162.

Circuit court could not consider alleged denial of visitation rights in determining amount of child support to be paid by resident defendant in proceedings brought by nonresident plaintiff under Uniform Reciprocal Enforcement of Support Act. Id.

Neither this Act nor Family Support Act grants in personam jurisdiction over nonresident party who is not otherwise subject to power of Michigan courts. Fitzwater v. Fitzwater, 97 Mich.App. 92.

§ 25.225.2. Purposes of Act.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

Cases

Construction, operation and effect.

The purpose of the Uniform Reciprocal Enforcement of Support Act is to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto. San Joaquin County, California v. Dewey, 105 Mich.App. 122.

§ 25.225.3. Definitions.

As used in this Act, unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States and the District of Columbia and any foreign State in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the chancery division of any of the circuit courts of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial (legal) separation, separate maintenance or otherwise.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means any person to whom a duty of support is owed.

HISTORY: (Am.P.A. 1959, No. 191, eff. March 19, 1960.)

§ 25.225.4. Remedies Provided Deemed Additional.

The remedies herein provided are in addition to and not in substitution for any other remedies.

Cases

Construction and effect.

Proceedings under Uniform Reciprocal Enforcement of Support Act are supplementary and ancillary to existing remedies and would not bar further proceedings to enforce child support orders entered in initial divorce action. Talbot v. Talbot, 99 Mich.App. 247.

§ 25.225.5. Duty of Support and Remedies Deemed Binding Upon Obligor.

The duty of support imposed by the laws of this State or by the laws of the State where the obligee was present when the failure to support commenced as provided in § 8 and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

Cases

Construction and effect.

That plaintiff might have been in contempt of court for removing her child from State involved ancillary issue and could not be considered in determining defendant's duty to support child in proceedings under Uniform Reciprocal Enforcement of Support Act. State of Maine v. Horton, 99 Mich.App. 90.

§ 25.225.6. Extradition of Person Charged with Crime of Failing To Provide for Support of Another Person.

The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State.

The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand, although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

§ 25.225.7. Obligor Relieved of Extradition by Compliance with Order of Support.

Any obligor contemplated by § 6, who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

§ 25.225.8. Enforceable Duties of Support; Presumption of Presence of Obligor.

Duties of support enforceable under this law are those imposed or imposable under the laws of any State where the alleged obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Am.P.A. 1960, No. 55, eff. August 17.)

§ 25.225.9. Right of State or Political Subdivision To Invoke Provisions of Act.

Whenever the State or a political subdivision thereof has furnished or is furnishing support to an obligee, it shall have the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (Am.P.A. 1953, No. 202, eff. October 2.)

Cases

Action for reimbursement.

A sister State of a subdivision of such State which has assumed part of the support of a child may, pursuant to the Uniform Reciprocal Enforcement of Support Act, seek in a Michigan court having jurisdiction over one owing a duty to support such child reimbursement for funds expended and an order of continuing support. San Joaquin County, California v. Dewey, 105 Mich.App. 122.

§ 25.225.10. Jurisdiction of Proceedings Under Act.

Jurisdiction of all proceedings hereunder shall be vested in the circuit court in chancery of the county of petitioner's residence, whenever proceedings hereunder are initiated in this State, or of the county where the respondent resides or may be found, whenever such proceedings shall have been initiated in another State and regardless of whether a support order in favor of the petitioner against the respondent has been issued by some other court of this State. Proceedings for support hereunder may be initiated by petition filed in the appropriate court irrespective of the relationship between obligor and obligee.

HISTORY: (Am.P.A. 1957, No. 147, eff. September 27.)

Cases

Construction and effect.

Trial court order terminating defendants obligation to support child "until further order of court" did not preclude subsequent entry of order under Uniform Reciprocal Enforcement of Support Act, where trial court's continuing jurisdiction to modify termination order as part of divorce judgment gave rise to duty of support "imposable" by law or court within specific language of act. State of Maine v. Horton, 99 Mich.App. 90.

§ 25.225.10a. Duty of Prosecuting Attorney To Represent Petitioner.

In all instances in which a public support burden has been incurred or is threatened, it shall be the duty of the prosecuting attorney to represent the petitioner in initiating and conducting proceedings under this Act provided that the petitioner may be represented in any proceedings by private counsel, at his own expense.

HISTORY: (P.A. 1953, No. 202, eff. October 2.)

§ 25.225.11. Petition; Verification, Contents, Filing.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent, including, but without limitation, by enumeration, a photograph of the respondent, a description of any distinguishing marks on his person, other names and

aliases by which he has been or is known, the name of his employer, his fingerprints or Social Security number. All petitions filed in accordance with this Act shall be filed by the clerk of the court as a miscellaneous matter.

HISTORY: (Am.P.A. 1953, No. 202, eff. October 2.)

Cases

Construction and effect.

Under provision of § 25.508, that methods of enforcement provided in Paternity Act are not exclusive and that enforcement of support orders may also be sought under provisions of Uniform Reciprocal Enforcement of Support Act, plaintiff who had obtained prior consent order of support against defendant in paternity action was entitled to consideration in circuit court of subsequent petition filed in sister State for support of child under Uniform Reciprocal Enforcement of Support Act. Washington v. Sherrod, 82 Mich.App. 143.

In proceedings against nonresident respondent under Uniform Enforcement of Support Act requiring petition to State, inter alia, address and circumstance of respondent, dependents for whom support is sought, "and all other pertinent information," failure of petition to State as "other pertinent information" prior court-approved agreement discharging respondent's support obligation in proceeding under Paternity Act barring other remedies for support upon performance of court-approved agreements mandated quashing of petition without prejudice to petitioner's refiling of another petition setting out such pertinent information. Martin v. Coffey, 83 Mich.App. 113.

§ 25.225.11a. Same; On Behalf of Minor Obligee.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as next friend.

HISTORY: (P.A. 1953, No. 202, eff. October 2.)

§ 25.225.12. Court of this State Acting as Initiating State; Duty if Petition Sets Forth Certain Facts.

If the court of this State, acting as an initiating State, finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the respondent or his property, he shall so certify and shall cause 3 copies of the petition, the court's certificate and this Act, to be transmitted to the court in the responding State within the jurisdiction of which the respondent is alleged to reside or be present. If the name or address of such court is unknown, or if the respondent is no longer within the jurisdiction of the named court and the responding State has an information agency comparable to that established in the initiating State, such copies may be transmitted to the State Information Agency or other proper official of the responding State with a request that it forward them to and file with the proper court and that such court acknowledge the receipt thereof to the initiating State. If the responding State is a foreign State, such copies shall be transmitted to the State Department of Social Welfare for transmittal to

the proper court of the responding State after determination concerning the statutes of reciprocity in accordance with § 24 of this Act.

HISTORY: (Am.P.A. 1953, No. 202, eff. October 2, 1953; 1959, No. 191, eff. March 19, 1960.)

§ 25.225.12a. Belief That Respondent May Flee Jurisdiction; Obtaining Body of Respondent.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction, it may:

(1) As an initiating State, request in its certificate that the court of the responding State obtain the body of the respondent by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the respondent by appropriate process.

HISTORY: (P.A. 1953, No. 202, eff. October 2.)

§ 25.225.12b. State Information Agency; Designation of Department of Social Welfare as; Duties.

The State Department of Social Welfare is hereby designated as the State Information Agency under this Act, and it shall be its duty:

(1) To compile annually a list of the courts and their address is in this State having jurisdiction under this Act and the particular officers assigned duties in connection with the administration of this Act and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar act, including any foreign State in which this or a substantially similar reciprocal law has been enacted. Together with a copy of this Act whenever it has been amended, or otherwise upon request;

(2) To maintain a register of such lists received from other States and to supply information from such lists to every court in this State having jurisdiction under this Act;

(3) To maintain in the bureaus of social aid a supply of duplicated copies of this Act, as amended, for the use of court officers in preparing cases to be forwarded to responding States; and

(4) To act generally as a clearing center for information and maintaining general liason with the council of State governments, law enforcement agencies, the legislature, other governmental or private agencies concerned with this Act and the public.

HISTORY: (P.A. 1953, No. 202, eff. October 2; am.P.A. 2957, No. 147, eff. September 27; 1959, No. 101, eff. March 19, 1960.)

§ 25.225.13. Court of this State Acting as Responding State; Duty; Duty of Prosecuting Attorney.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall:

(1) Docket the case;

(2) Notify the prosecuting attorney of the county, who shall be thereby charged with the duty of carrying on the proceedings;

(3) Set a time and place for a hearing; and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (Am.P.A. 1953, No. 202, eff. October 2.)

§ 25.225.13a. Same; Inability To Obtain Jurisdiction, Duty; Forwarding of Petition.

If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this Act to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating State. If the respondent has been located in some other county of this State it shall not be necessary to obtain an amended petition but the original petition shall be forwarded to the circuit court in chancery of the county where the respondent has been located which court shall have jurisdiction regardless of the language of the petition.

HISTORY: (P.A. 1953, No. 202, eff. October 2; am.P.A. 1957, No. 147, eff. September 27.)

§ 25.225.13b. Conduct of Proceedings Under Act, Manner.

The court shall conduct proceedings under this Act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

HISTORY: (P.A. 1953, No. 202, eff. October 2.)

§ 25.225.14. Court of Responding State Finding Duty of Support; Order, Subjection of Property to Order.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefore and subject the property of the respondent to such order.

Judicial discretion.

A court, upon finding a duty of support within the meaning of the Uniform Reciprocal Enforcement of Support Act, has the discretionary power in an action seeking reimbursement of payment or an order of continuing support pursuant to that act to order the person owing such duty to support to make such support payments. San Joaquin County, California v. Dewey, 105 Mich.App. 122.

It is an abuse of discretion for a circuit court in an action for support brought by a sister State pursuant to the Uniform Reciprocal Enforcement of Support Act to refuse to address the question of granting reimbursement and continuing child support because of the court's inability to decide the question of the custody of the child in the same action, since those issues are ancillary to the duty to support and should not be considered in an action brought under the enforcement of support act. Id.

§ 25.225.15. Transmission of Copies of Orders of Court of this State to Court of Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or orders for reimbursement therefor.

§ 25.225.16. Additional Powers of Court of this State When Acting as Responding State.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(a) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent;

(b) To require the respondent to make payments at specified intervals to the clerk of the court or the friend of the court, as specified in the order, and to report personally to such clerk or friend of the court at such time as may be deemed necessary and as required by such order; and

(c) To punish the respondent who fails and refuses to obey and comply and with the order of the court, having sufficient ability to comply, such punishment to be imposed by the court as a contempt of court, placing the respondent on probation or committing the respondent to the county jail of the county in which such person was convicted, or in Wayne County to the Detroit House of Correction, for such period as said respondent shall continue to be in contempt, not to exceed 1 year.

The court may also order an assignment to the friend of the court of salary, wages or other income of the person responsible for the payment of support and maintenance, which assignment shall continue until further order of the court. The order of assignment

shall be effective 1 week after service upon the employer of a true copy of the order by personal service or by certified mail. Thereafter, the employer shall withhold from the earnings due the employee the amount specified in the order of assignment for transmittal to the friend of the court until further order of the court. The person ordered to pay the support and maintenance shall inform the friend of the court immediately of any change which would affect the assignment or the disbursement thereof. An employer shall not use the assignment as a basis, in whole or in part, for the discharge of an employee or for any other disciplinary action against an employee. Compliance by an employer with the order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's earnings so affected. The term employer as used in this section includes the State and any political subdivision thereof.

HISTORY: (Am.P.A. 1955, No. 161, eff. June 7, 1966; No. 232, eff. January 1, 1967.)

§ 25.225.17. Court of this State Acting as Responding State; Receipt and Transmission of Payments; Certified Statement of Payments.

The court of this State, when acting as a responding State, shall have the following duties which may be carried out through the clerk of the court or the friend of the court, in counties having a friend of the court:

(a) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(b) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

§ 25.225.18. Court of this State Acting as Initiating State; Receipt and Disbursement of Payments.

The court of this State, when acting as an initiating State, shall have the duty which may be carried out through the clerk of the court or the friend of the court, in counties having a friend of the court, to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

§ 25.225.19. Competency of Husband and Wife as Witnesses.

Husband and wife are competent witnesses (and may be compelled) to testify to any relevant matter in connection herewith.

§ 25.225.20. Expenses and Costs of Proceedings Under Act To Be County Charge; Payment, Reimbursement; Filing Fee.

Expenses of stenographic records of court proceedings and of exemplification of court records, and all other costs incurred by the court or other public agency, including filing fees in the responding State when Michigan is the initiating State, in proceedings under this Act, shall be a county charge and shall be paid out of the county treasury, but the court, in its discretion, may require such reimbursement thereof from the respondent

or other party to the proceeding as may appear equitable. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee in Michigan.

HISTORY: (Am.P.A. 1953, No. 202, eff. October 2; 1957, No. 147, eff. September 27.)

§ 25.225.21. Support Order by Court Acting as Responding State; Effect on Previous Support Order; Crediting of Payment; Enforcement.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both. Every circuit court in chancery of this State shall have concurrent jurisdiction with the court issuing an order of support under this Act for the purpose of enforcing the order.

HISTORY: (P.A. 1953, No. 202, eff. October 2; am.P.A. 1957, No. 147, eff. September 27.)

§ 25.225.22. Participation in Proceedings, Jurisdiction in Other Proceedings Not Conferred.

Participation in any proceedings under this Act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceedings.

HISTORY: (P.A. 1953, No. 202, eff. October 2.)

§ 25.225.23. Reimbursement of County for Cost of Handling Payments; Fees, Disposition.

(1) To reimburse the county for the cost of handling alimony or support payments under this Act, the court shall order the payment of a service fee of $2.00 per month, payable semiannually on January 2 and July 2 thereafter, to the friend of the court. The service fee shall be paid by the person ordered to pay the alimony or support money. The fee shall be computed from the beginning date of the alimony or support order and shall continue while the alimony or support order is operative. The service fee shall be paid 6 months in advance on each due date, except for the first payment, which shall be paid at the same time the alimony or support order is filed. and shall cover the period of time from that month until the next calendar due date. Every order or judgment for the payment of temporary or permanent alimony or support money shall provide for the payment of the service fee. Any order or judgment for the payment of temporary or permanent alimony or support money, entered before the effective date of this 1983 amendatory act, may be amended by the court, upon its own motion, to provide for the payment of the service fee in the amount provided by this subsection, upon proper notice to the person ordered to pay the alimony or support money. The service fees shall be turned over to the county treasurer and credited to the general fund of the county.

(2) A person who fails or refuses to pay a service fee ordered pursuant to subsection (1) may be held in contempt of court.

HISTORY: (P.A. 1955, No. 161, imd.eff. June 7; am.P.A. 1959, No. 108, eff. March 19, 1960; 1967, No. 72, eff. January 1, 1968; P.A. 1983, No. 192, § 1, eff. Nov. 1.)

§ 25.225.24. Declaration of Foreign State as Reciprocating State; Condition; Revocation.

Where the Social Welfare Commission is satisfied that reciprocal provisions will be made by any foreign State for the enforcement therein of maintenance orders made within this State, the Social Welfare Commission, with the approval of the Attorney General, may declare the foreign State to be a reciprocating State for the purpose of this Act. Any such order may be revoked by the Social Welfare Commission, and thereupon the State with respect to which the order was made shall cease to be a reciprocating State for the purposes of this Act.

HISTORY: (P.A. 1959, No. 191, eff. March 19, 1960.)

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§ 518C.01. Purposes.

The purposes of §§ 518C.01 to 518C.36 are to improve and extend by reciprocal legislation the enforcement of the duties of support.

HISTORY: (L. 1982, ch. 436, § 1, eff. March 19, 1982.)

§ 518C.02. Definitions.

Subd. 1. For the purposes of §§ 518C.01 to § 518C.36, the terms defined in this section shall have the meanings given to them.

Subd. 2. "COURT" means the district or a county court of this State and, when the context requires, means the court of another State as defined in a substantially similar reciprocal law.

Subd. 3. "DUTY OF SUPPORT" means a duty of support, whether imposed or imposable by law or by order, decree or judgment of a court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

Subd. 4. "GOVERNOR" includes a person performing the functions of Governor or the executive authority of any State covered by §§ 518C.01 to 518C.36.

Subd. 5. "INITIATING STATE" means a State in which a proceeding under this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

Subd. 6. "LAW" includes both common and statutory law.

Subd. 7. "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or a political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

Subd. 8. "OBLIGOR" means a person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

Subd. 9. "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

Subd. 10. "REGISTER" means to file in the Office of the Clerk of the Court.

Subd. 11. "REGISTERING COURT" means a court of this State in which a support order of a rendering State is registered.

Subd. 12. "RENDERING STATE" means a State in which a court has issued a support order for which registration is sought or granted in the court of another State.

Subd. 13. "RESPONDING STATE" means a State in which any responsive proceeding under a proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which a responsive proceeding is commenced.

Subd. 14. "STATE" includes a State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and a foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

Subd. 15. "SUPPORT ORDER" means a judgment, decree or order of support in favor of an obligee, whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1982, ch. 436, § 2, eff. March 19, 1982.)

Cases

Limitation of application of the revised Uniform Reciprocal Enforcement of Support Act to situations involving proceedings relating to dissolution was not required under provision of the State Constitution that no law shall embrace more than one subject which shall be embraced in its title, even though title of bill enacting revised Act was "An act relating to marriage dissolution; adopting the revised Uniform Reciprocal Enforcement of Support Act. . . ." England v. England, 337 N.W.2d 681 (Minn., 1983).

Revised Uniform Reciprocal Enforcement of Support Act may be employed to determine and enforce duty of parent to support minor children of marriage even though there exists no prior or pending action affecting the marital relationship or affecting child custody, visitation or support. Id.

The revised Uniform Reciprocal Enforcement of Support Act was properly employed by wife, in action for welfare reimbursement, to establish initial support order even though no action for divorce or separation had ever been commenced and there existed no order regarding child custody, visitation or support, and despite contention that wife, by moving children's residence to Louisiana, had interfered with husband's parental rights. Id.

Deprivation of custody or visitation is not a proper factor to consider in determining or enforcing interstate support obligations. Id.

Participation in a proceeding under the revised Uniform Reciprocal Enforcement of Support Act does not confer jurisdiction upon a court over the parties thereto in another proceeding. Id.

In standard action under Uniform Reciprocal Enforcement of Support Act in which ongoing support is sought, duty of support is to be determined by law of the responding State without regard to orders or judgments of foreign courts. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

The Uniform Reciprocal Enforcement of Support Act which became effective on March 19, 1982, would be applied where petition was filed in another State several days prior to March 19, 1982, even though it was not received and filed by court clerk in Minnesota until April 9, 1982. Id.

In Uniform Reciprocal Enforcement of Support Act action, trial court was not bound by earlier New York order; instead, the court was required to apply Minnesota law. Id.

§ 518C.03. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under §§ 518C.01 to 518C.36, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife, or parent and child is not available to the obligor.

HISTORY: (L. 1982, ch. 436. § 3, eff. March 19, 1982.)

Cases

Revised Uniform Reciprocal Enforcement of Support Act may be employed to determine and enforce duty of parent to support minor children of marriage even though there exists no prior or pending action affecting the marital relationship or affecting child custody, visitation or support. England v. England, 337 N.W.2d 681 (Minn., 1983).

§ 518C.04 Rules of Civil Procedure.

The rules of civil procedure for the District Court apply to proceedings under §§ 518C.01 to 518C.36, except as otherwise provided therein.

HISTORY: (L. 1982, ch. 436, § 4, March 19, 1982.)

Cases

In standard action under Uniform Reciprocal Enforcement of Support Act in which ongoing support is sought, duty of support is to be determined by law of the responding State without regard to orders or judgments of foreign courts. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

§ 518C.05. Jurisdiction.

Except in Hennepin and Ramsey Counties, jurisdiction of a proceeding under §§ 518C.01 to 518C.36 is vested in the county court. In Hennepin and Ramsey Counties, jurisdiction of a proceeding under §§ 58C.01 to 518C.36 is vested in the District Court.

HISTORY: (L. 1982, ch. 436, § 5, eff. March 19, 1982.)

Cases

The Uniform Reciprocal Enforcement of Support Act, which became effective on March 19, 1982, would be applied where petition was filed in another State several days prior to March 19, 1982, even though it was not received and filed by court clerk in Minnesota until April 9, 1982. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

§ 518C.06. Contents and Filing of Petition for Support; Venue.

Subd. 1. Contents. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information that may help in locating, or identifying, the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

Subd. 2. Filing. The petition may be filed in the appropriate court of a State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should have been filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties, or where another court has already issued a support order in some proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1982, ch. 486, § 6, eff. March 19, 1982.)

§ 518C.07. Prosecuting Attorney To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney shall represent the obligee in a proceeding under §§ 518C.01 to 518C.36. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation. In addition to the foregoing representation, an attorney retained by the obligee may represent the obligee in a proceeding under §§ 518C.01 to 518C.36.

HISTORY: (L. 1982, ch. 436, § 7, eff. March 19, 1982.)

§ 518C.08. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1982, ch. 436, § 8, eff. March 19, 1982.)

§ 518C.09. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support, and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of §§ 518C.01 to 518C.36 to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court are unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that

the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1982, ch. 436, § 9, eff. March 19, 1982.)

§ 518C.10. Court Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid, in whole or in part, by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1982, ch. 436, § 10, eff. March 19, 1982.)

§ 518C.11. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the person of the obligor by appropriate process; or

(2) As a responding court, obtain the person of the obligor by appropriate process.

Thereupon, it may release him either upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1982, ch. 436, § 11, eff. March 19, 1982.)

§ 518C.12. Duty of the Court and the Prosecuting Attorney of this State as Responding State.

Subd. 1. Docketing case. After the responding court receives copies of the petition, the certificate and the substantially similar reciprocal act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

Subd. 2. Prosecution of case. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

Subd. 3. Investigation by prosecuting attorney. The prosecuting attorney, on his own initiative, shall use all means at his disposal to locate the obligor or his property, and if, because of inaccuracies in the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and

request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

Subd. 4. Obligor located in another county or State. If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State, or another State, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county, or to a court in the other State, or to the information agency or other proper official of the other State, with a request that the documents be forwarded to the proper court. All powers and duties provided by §§ 518C.01 to 518C.36 apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

Subd. 5. No information. If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1982, ch. 436, § 12, eff. March 19, 1982.)

§ 518C.13. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1982, ch. 436, § 13, eff. March 19, 1982.)

§ 518C.14. Immunity from Criminal Prosecution.

If, at a hearing, the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in his testimony.

HISTORY: (L. 1982, ch. 436, § 14, eff. March 19, 1982.)

§ 518C.15. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under §§ 518C.01 to 518C.36. Husband and wife are competent witnesses and may be compelled to testify to a relevant matter, including marriage and parentage.

HISTORY: (L. 1982, ch. 436, § 15, eff. March 19, 1982.)

§ 518C.16. Rules of Evidence.

In any hearing for the civil enforcement of §§ 518C.01 to 518C.36, the court is governed by the Minnesota rules of evidence. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to defenses available to an obligor with respect to paternity under § 518C.18 or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1982, ch. 436. § 16, eff. March 19, 1982.)

Cases

Matters relating to custody or visitation may not be raised as defenses or counterclaims in proceedings under the Revised Uniform Reciprocal Enforcement of Support Act. England v. England, 337 N.W.2d 681 (Minn., 1983).

Deprivation of custody or visitation is not a proper factor to consider in determining or enforcing interstate support obligations. Id.

Language in Uniform Reciprocal Enforcement of Support Act providing that if action is based on support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support means that a foreign order is evidence that the obligor's relationship to the obligee gives rise to a duty to support, and does not compel a responding State to award the same level of support. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

In actions for child support, deprivation of visitation is not a proper factor to consider in determining what level of support is appropriate. Id.

§ 518C.17. Order of Support.

Subd. 1. Issuance of order. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made under §§ 518C.01 to 518C.36 shall require that payments be made as the responding court directs and the responding court shall order support payments under ch. 518. Every order for support shall provide for a conspicuous notice that, if the obligor fails to make the support payments, the obligee or a public agency responsible for support enforcement may obtain docketing of a judgment for the unpaid amounts under the provisions of § 548.091. The notice shall enumerate the conditions that must be met before the judgment can be docketed. The court and the prosecuting attorney of a county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible, or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of a county in which it appears that the proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

Subd. 2. Copy to initiating court. The responding court shall cause a copy of each support order to be sent to the initiating court.

Subd. 3. Additional powers of responding court. In addition to the foregoing powers, a responding court may subject the obligor to the terms and conditions proper to assure compliance with orders and in particular to:

(1) Require the obligor to furnish a cash deposit or bond of a character and amount to assure payment of the amount due;

(2) Require the obligor to report personally and to make payments at specified intervals in the manner that the court directs; and

(3) Punish the obligor who violates an order of the court under the court's contempt power.

HISTORY: (L. 1982, ch. 436, § 17, eff. March 19, 1982; am.L. 1983, ch. 308, § 28, eff. June 10, 1983; L. 1984, ch. 547, § 21, eff. April 26, 1984.)

Cases

Child support guidelines were applicable to action for support brought pursuant to Uniform Reciprocal Enforcement of Support Act brought after effective date of adoption of the guidelines even though dissolution judgment and decree which established support obligation were entered before effective date. Kusel v. Kusel, 361 N.W.2d 165 (Minn.App., 1985).

In child support action brought pursuant to Uniform Reciprocal Enforcement of Support Act by former wife against former husband, downward deviation of 20 percent from child support guidelines was supported by adequate findings that the amount awarded would not downgrade children's standard of living and that needs and resources of parents were comparable and could reasonably be satisfied from their respective wages after they each made contributions to support of their children. Id.

Full faith and credit clause does not preclude Minnesota from modifying future child support installments required by Wisconsin divorce decree. Arora v. Arora, 351 N.W.2d 668 (Minn.App., 1984).

Father's homestead and exempt personal goods could not be ordered sold at public auction to satisfy his child support arrearages; only his nonexempt property could be ordered sold to satisfy such obligation; furthermore, any insurance proceeds he received from the destruction of his homestead and personal property were also exempt. Nicollet County on Behalf of Block v. Havron, 357 N.W.2d 134 (Minn.App., 1984).

In Uniform Reciprocal Enforcement of Support Act action, trial court was not bound by earlier New York order, instead, the court was required to apply Minnesota law. State of Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

In a standard Uniform Reciprocal Enforcement of Support Act action, the responding court does not grant an award of accrued arrearages under foreign order, it may instead make an award for reimbursement of proved expenses reasonably paid by the obligee for past support of the child, but has no power to modify terms of the foreign decree. Id.

In Uniform Reciprocal Enforcement of Support Act action, trial court did not abuse its discretion in setting ongoing support at $160 per month, in light of the parties' relative financial positions, projected costs of college education, and the child's scholarships and prospects for summer employment. Id.

When Minnesota court orders payments to be made under Uniform Reciprocal Enforcement of Support Act, those payments constitute a credit against amounts accruing under foreign orders. Id.

§ 518C.18. Paternity.

If an obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1982, ch. 436. § 18, eff. March 19, 1982.)

Cases

Husband, and presumed father, was not required to be represented by counsel in dissolution action in order to be precluded by the judgment from later raising defense of nonpaternity. State ex rel. Ondracek v. Blohm, 363 N.W.2d 113 (Minn.App., 1985).

Affirmative finding of paternity in judgment and decree of dissolution was res judicata and barred defense of nonpaternity in subsequent action for enforcement of child support. Id.

§ 518C.19. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under §§ 518C.01 to 518C.36 because of a pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or another State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding, and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1982, ch. 436, § 19, eff. March 19, 1982.)

Cases

Revised Uniform Reciprocal Enforcement of Support Act may be employed to determine and enforce duty of parent to support minor children of marriage even though there exists no prior or pending action affecting the marital relationship or affecting child custody, visitation or support. England v. England, 337 N.W.2d 681 (Minn., 1983).

Provision of Uniform Reciprocal Enforcement of Support Act that, if another action or proceeding is concluded before hearing in instant proceeding and judgment therein provides for support demanded in petition being heard, court must conform its support order to amount allowed in the other action or proceeding, applies where a Uniform Reciprocal Enforcement of Support Act action and a divorce proceeding are contemporaneous, and the divorce order, setting a level of support, issued before the Uniform Reciprocal Enforcement of Support Act court should conform its order to the divorce decree, so as to avoid needlessly duplicative judicial inquiry. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

§ 518C.20. Multiple Support Orders.

A support order made by a court of this State under §§ 518C.01 to 518C.36 does not nullify and is not nullified by a support order made by a court of this State under another law or a support order made by a court of another State under a substantially similar act or another law, regardless of priority of issuance, unless specifically provided by the court. Amounts paid for a particular period under a support order made by the court of another State shall be credited against amounts accruing or accrued for the same period under a support order made by the court of this State.

HISTORY: (L. 1982, ch. 436, § 20, eff. March 19, 1982.)

Cases

Where order issued by Nevada District Court under Uniform Reciprocal Enforcement of Support Act (Minn.Stat.Ann. § 518C.01 et seq.) did not expressly modify child support provisions of Minnesota divorce decree father's support obligation under that decree was not modified according to § 518C.20; two subsequent Nevada orders merely decreased support in accordance with first decree issued by Nevada court. Faribault-Martin-Watonwan Human Services ex rel. Jacobson v. Jacobson, 363 N.W.2d 342 (Minn.App., 1985).

§ 518C.21. Effect of Participation in Proceeding.

Participation in a proceeding under §§ 518C.01 to 518C.36 does not confer jurisdiction upon a court over the parties thereto in another proceeding.

HISTORY: (L. 1982, ch. 436, § 21, eff. March 19, 1982.)

Cases

Submission by wife to jurisdiction of Minnesota court for purposes of recovering support under the revised Uniform Reciprocal Enforcement of Support Act did not automatically make her subject to custody or visitation claim in Minnesota. England v. England, 337 N.W.2d 681 (Minn., 1983).

Participation in a proceeding under the revised Uniform Reciprocal Enforcement of Support Act does not confer jurisdiction upon a court over the parties thereto in another proceeding. Id.

Deprivation of custody or visitation is not a proper factor to consider in determining or enforcing interstate support obligations. Id.

§ 518C.22. Registration.

If the duty of support is based on a foreign support order the obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (L. 1982, ch. 436, § 22, eff. March 19, 1982.)

Cases

Difficult question whether a Minnesota court would be required to do what the foreign court itself might not do in action for enforcement of support decree should be litigated in more formal context of registration proceedings rather than in standard Uniform Reciprocal Enforcement of Support Act action. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

A support obligee who relies on a foreign order and who seeks enforcement of the amount therein prescribed without having first reduced it to judgment in the foreign State should register the order as provided by provision of Uniform Reciprocal Enforcement of Support Act. Id.

§ 518C.23. Prosecuting Attorney To Represent Obligee.

If this State is acting either as a rendering or a registering State, the prosecuting attorney shall represent the obligee in proceedings under §§ 518C.22 to 518C.25. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation. In addition to the preceding representation, an attorney retained by the obligee may represent him in interstate proceedings under §§ 518C.22 to 518C.25.

HISTORY: (L. 1982, ch. 436, § 23, eff. March 19, 1982.)

§ 518C.24. Registration Procedure; Notice.

Subd. 1. Procedure. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof;

(2) A copy of the reciprocal enforcement of support act of the State in which the order was made; and

(3) A statement verified and signed by the obligee showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents, the clerk of the court, without payment of a filing fee or other costs to the obligee, shall file them. The filing constitutes registration under §§ 518C.01 to 518C.36.

Subd. 2. Duties after registration. Promptly upon registration, the clerk of the court shall send, by certified or registered mail, a notice of the registration with a copy

of the registered support order and the post office address of the obligee to the obligor at the address given. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1982, ch. 436, § 24, eff. March 19, 1982.)

Cases

A support obligee who relies on a foreign order and who seeks enforcement of the amount therein prescribed without having first reduced it to judgment in the foreign State should register the order as provided by provision of Uniform Reciprocal Enforcement of Support Act. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

Difficult question whether a Minnesota court would be required to do what the foreign court itself might not do in action for enforcement of support decree should be litigated in more formal context of registration proceedings rather than in standard Uniform Reciprocal Enforcement of Support Act action. Id.

§ 518C.25. Effect of Registration; Enforcement Procedure.

Subd. 1. Effect of registered foreign support order. Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

Subd. 2. Time to petition court to vacate order. The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

Subd. 3. Hearing; stay of order. At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support order, as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support order that is required for a support order of this State.

HISTORY: (L. 1982, ch. 436, § 25, eff. March 19, 1982.)

Cases

In standard Uniform Reciprocal Enforcement of Support Act action, trial court independently determines what amount should be given to an obligee for current support, but such a determination leaves the foreign order unaffected. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

In Uniform Reciprocal Enforcement of Support Act action, trial court erred in purporting to cancel accrued arrearages and to modify foreign court order in that the foreign order had not been registered and was thus not properly before the court for either enforcement or modification. Id.

A support obligee who relies on a foreign order and who seeks enforcement of the amount therein prescribed without having first reduced it to judgment in the foreign State should register the order as provided by provision of Uniform Reciprocal Enforcement of Support Act. Id.

Difficult question whether a Minnesota court would be required to do what the foreign court itself might not do in action for enforcement of support decree should be litigated in more formal context of registration proceedings rather than in standard Uniform Reciprocal Enforcement of Support Act action. Id.

§ 518C.26. Remedies of State or Political Subdivision Furnishing Support.

If a State or political subdivision furnishes support to an individual obligee, it has the same right as the individual obligee to initiate a proceeding under §§ 518C.01 to 518C.36 to secure reimbursement for the support furnished and to obtain continuing support.

HISTORY: (L. 1982, ch. 436, § 26, eff. March 19, 1982.)

§ 518C.27. Payments.

Subd. 1. Duties of responding court. A responding court has the following duties that shall be carried out through the public authority responsible for support enforcement:

(1) To transmit to the initiating court a payment made by the obligor pursuant to an order of the court or otherwise; and

(2) To furnish to the initiating court, upon request, a certified statement of each payment made by the obligor.

Subd. 2. Duties of initiating court. An initiating court shall receive and disburse promptly each payment made by the obligor or sent by the responding court. This duty shall be carried out through the public authority responsible for support enforcement.

HISTORY: (L. 1982, ch. 436, § 27, eff. March 19, 1982.)

§ 518C.28. Choice of Law.

Duties of support applicable under §§ 518C.01 to 518C.36 are those imposed under the laws of the State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1982, ch. 436, § 28, eff. March 19, 1982.)

Cases

Though duties of support applicable under Uniform Reciprocal Enforcement of Support Act are those imposed under laws of State where obligor was present for period during which support is sought, a foreign order may be used as evidence that the obligor does in fact owe a duty of support. State on Behalf of McDonnell v. McCutcheon, 337 N.W.2d 645 (Minn., 1983).

In a standard action under Uniform Reciprocal Enforcement of Support Act, responding court is not required to conform its support order to provisions of a decree of a foreign State, but instead makes an independent award based on Minnesota law. Id.

§ 518C.29. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 518C.28, bind the obligor present in this State, regardless of the presence or residence of the obligee.

HISTORY: (L. 1982, ch. 436, § 29, eff. March 19, 1982.)

Cases

Under both Federal and State law, custodial parent's removal of child from State without court order and without permission of noncustodial parent who had been awarded visitation rights, and custodial parent's concealment of child's location, did not relieve noncustodial parent from payment of child support arrearages that accrued during period of concealment. State ex rel. Southwell v. Chamberland, 361 N.W.2d 814 (Minn., 1985).

§ 518C.30. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to, and not in substitution for, other remedies.

HISTORY: (L. 1982, ch. 463, § 30, eff. March 19, 1982.)

Cases

Revised Uniform Reciprocal Enforcement of Support Act may be employed to determine and enforce duty of parent to support minor children of marriage even though there exists no prior or pending action affecting the marital relationship or affecting child custody, visitation or support. England v. England, 337 N.W.2d 681 (Minn., 1983).

§ 518C.31. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of a person; or

(2) On demand by the Governor of another State, surrender a person found in this State who is charged criminally in that State with failing to provide for the support of a person. Provisions for extradition of criminals, not inconsistent with §§ 518C.01 to 518C.36, apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and proceedings for extradition under this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1982, ch. 436, § 31, eff. March 19, 1982.)

§ 518C.32. Conditions of Interstate Rendition.

Subd. 1. Demand of other State. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require a prosecuting attorney of this State to satisfy him that the obligee initiated proceedings for support under §§ 518C.01 to 518C.36 at least 60 days earlier or that such proceedings would be of no avail.

Subd. 2. Demand by other State. If, under a substantially similar reciprocal law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require a prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

Subd. 3. Refusal of demand. If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1982, ch. 436, § 32, eff. March 19, 1982.)

§ 518C.33. Intrastate Application.

Subd. 1. Obligee and obligor both in this State. §§ 518C.01 to 518C.36 apply if both the obligee and the obligor are in this State.

Subd. 2. Procedure; duties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court or the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for this State as a responding State.

Subd. 3. Registration by obligee. An obligee seeking to register a support order of the district court or of a county court of this State in a court of another county of this State shall transmit to the clerk of the court of the other county a certified copy of the order with all modifications thereof and a statement, signed and verified by the obligee, showing the post office address of the obligor, the amount of support remaining unpaid and a description and the location of any property of the obligor available upon execution. On receipt of these documents, the clerk of court shall file them, without requiring payment of a filing fee or other costs by the obligee. The filing constitutes registration under §§ 518C.01 to 518C.36. Promptly on registration the clerk of court shall proceed pursuant to § 518C.24, Subd. 2. The prosecuting attorney and the court in the county to which the documents are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a registering State.

HISTORY: (L. 1982, ch. 436, § 33, eff. March 19, 1982; am.L. 1983, ch. 308, § 29, eff. June 10, 1983.)

§ 518C.34 Appeals.

If the Commissioner of Human Services is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court, if the support order was issued by a court of this State; or

(b) If the support order was issued in another State cause the appeal to be taken in the other State. In either case, expenses of the appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1982, ch. 436, § 34, eff. March 19, 1982; am.L. 1984, ch. 654, art. 5, § 58.)

§ 518C.35. Uniformity of Interpretation.

§§ 518C.01 to 518C.36 are to be so construed as to effectuate their general purpose to make uniform the law of those States that enact it.

HISTORY: (L. 1982, ch. 436, § 35, eff. March 19, 1982.)

§ 518C.36. Short Title.

§§ 518C.01 to 518C.36 may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (L. 1982, ch. 436, § 36, eff. March 19, 1982.)

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§ 93-11-1. Short Title.

§§ 93-11-1 to 93-11-63 shall be known as the "Uniform Reciprocal Enforcement of Support Law of Mississippi."

HISTORY: (C. 1942, § 456.33; L. 1954, ch. 211, § 33.)

§ 93-11-3. Purposes; Liberal Construction.

The purposes of §§ 93-11-1 to 93-11-63 are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto. §§ 93-11-1 to 93-11-63 are remedial and shall be liberally construed to accomplish their purposes.

HISTORY: (C. 1942, § 456.01; L. 1954, ch. 211, § 1.)

Cases

The Uniform Reciprocal Enforcement of Support Law is intended only as an auxiliary or supplemental remedy in the courts of a sister State for the enforcement of orders of support, and consequently the original order of support rendered in the court of the initiating State is unaffected by the orders subsequently rendered in another State under this law except to the extent that payments made pursuant to one must be credited against payments accruing or accrued under the other for the same period or periods. Howard v. Howard, 191 So.2d 528.

The fact that the mother removed herself and her dependent child to a distant State, thereby depriving the father of his right of reasonable visitation afforded him in a decree of divorce, did not affect the father's duty to support the child, even though such removal might be interpreted as misconduct on the part of the mother. Kimbrell v. Kimbrell, 252 M 360, 173 So.2d 437.

§ 93-11-5. Definitions.

As used in §§ 93-11-1 to 93-11-63 unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the chancery court of each county in this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law and civil law where applicable.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree of judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance or otherwise.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means any person to whom a duty of support is owed.

HISTORY: (C. 1942, § 456.02; L. 1954, ch. 211, § 2.)

§ 93-11-7. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (C. 1942, § 456.03; L. 1954, ch. 211, § 3.)

§ 93-11-9. Extent of Duties of Support.

The duty of support imposed by the laws of this State or by the laws of the State where the obligee was present when the failure to support commenced as provided in § 93-11-15, and the remedies provided for enforcement thereof, including any penalty imposed thereby, bind the obligor regardless of the presence or residence of the obligee.

HISTORY: (C. 1942, § 456.04; L. 1954, ch. 211, § 4.)

§ 93-11-11. Interstate Rendition.

The Governor of this State (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State. The provisions of extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (C. 1942, § 456.05; L. 1954, ch. 211, § 5.)

§ 93-11-13. Relief from Extradition.

Any obligor contemplated by § 93-11-11, who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

HISTORY: (C. 1942, § 456.06; L. 1954, ch. 211, § 6.)

§ 93-11-15. What Duties Are Enforceable.

Duties of support enforceable under this law are those imposed or imposable under the laws of any State where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

HISTORY: (C. 1942, § 456.07; L. 1954, ch. 211, § 7.)

§ 93-11-17. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (C. 1942, § 456.08; L. 1954, ch. 211, § 8.)

§ 93-11-19. How Duties of Support Are Enforced; Jurisdiction of Proceedings.

All duties of support are enforceable by a bill of complaint irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the chancery court of the county in Mississippi wherein the defendant may be domiciled, live, reside or be found, when proceedings are as responding State; and jurisdiction of all proceedings hereunder shall be vested in the chancery court of the county in Mississippi wherein one or more of the dependents shall be domiciled, live, reside, or be found, when proceedings are as initiating State; and any proceedings authorized under §§ 93-11-1 to 93-11-63 may be heard in term time or in vacation.

HISTORY: (C. 1942, § 456.09; L. 1954, ch. 211, § 9.)

§ 93-11-21. Contents of the Bill of Complaint.

The bill of complaint shall be verified and shall state the name and, so far as known to the complainant, the addresses and circumstances of the defendant, his dependents for whom support is sought and all other pertinent information. The complainant may include in or attach to the bill of complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph

of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (C. 1942, § 456.10; L. 1954, ch. 211, § 10.)

§ 93-11-23. Officials To Represent Complainant.

The State Department of Public Welfare shall represent the complainant in any proceeding under §§ 93-11-1 through 93-11-63.

HISTORY: (C. 1942, § 456.11; L. 1954, ch. 211, § 11; L. 1985, ch. 518, § 20, eff. from and after July 1, 1985.)

§ 93-11-25. Complaint on Behalf of Minor.

A bill of complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (C. 1942, § 456.12; L. 1954, ch. 211, § 12.)

§ 93-11-27. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the bill of complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the bill of complaint, (2) its certificate, and (3) this law to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (C. 1942, § 456.13; L. 1954, ch. 211, § 13.)

§ 93-11-29. Costs and Fees.

A court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both complainant and defendant, or either, shall be paid by the county in which said court is located. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee.

HISTORY: (C. 1942, § 456.14; L. 1954, ch. 211, § 14.)

§ 93-11-31. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or (b) as a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (C. 1942, § 456.15; Laws 1954, ch. 211, § 15.)

§ 93-11-33. State Information Agency.

The Attorney General is hereby designated as the State Information Agency under §§ 93-11-1 to 93-11-63, and it shall be his duty:

(a) To compile a list of the courts and their addresses in this State having jurisdiction under §§ 93-11-1 to 93-11-63 and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law.

(b) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under § 93-11-1 to 93-11-63.

HISTORY: (C. 1942, § 456.16; L. 1954, ch. 211, § 16.)

§ 93-11-35. Duty of the Court of this State as Responding State.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall (1) docket the case, (2) notify the county attorney or District Attorney who is charged with the duty of carrying on the proceedings, (3) set a time and place for a hearing, and (4) take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

HISTORY: (C. 1942, § 456.17; L. 1954, ch. 211, § 17.)

§ 93-11-37. Further Duty of Responding Court.

If a court of this State, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the bill of complaint or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt or more accurate information or an amended complaint from the court in the initiating State.

HISTORY: (C. 1942, § 456.18; L. 1954, ch. 211, § 18.)

§ 93-11-39. Interrogatories and Depositions.

In any proceeding under §§ 93-11-1 to 93-11-63 the court may order interrogatories or depositions to be taken within or without the State, pursuant to the provisions of law applicable to a court of record.

HISTORY: (C. 1942, § 456.19; L. 1954, ch. 211, § 19.)

§ 93-11-41. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (C. 1942, § 456.20; L. 1954, ch. 211, § 20.)

§ 93-11-43. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or orders for reimbursement therefor.

HISTORY: (C. 1942, § 456.21; L. 1954, ch. 211, § 21.)

§ 93-11-45. Additional Powers of Responding Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (C. 1942, § 456.22; L. 1954, ch. 211, § 22.)

§ 93-11-47. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(b) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (C. 1942, § 456.23; L. 1954, ch. 211, § 23.)

Cases

This section Code 1942, § 456.23 clearly indicates that payments made under the provisions of the Uniform Reciprocal Enforcement of Support Law should be made to the proper court officials rather than directly to the nonresident mother of the dependent child. Kimbrell v. Kimbrell, 252 M 360, 173 So.2d 437.

§ 93-11-49. Additional Duty of the Court of this State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (C. 1942, § 456.24; L. 1954, ch. 211, § 24.)

§ 93-11-51. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under §§ 93-11-1 to 93-11-63. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage, within constitutional limits.

HISTORY: (C. 1942, § 456.25; L. 1954, ch. 211, § 24.)

§ 93-11-53. Rules of Evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the chancery court.

HISTORY: (C. 1942, § 456.26; L. 1954, ch. 211, § 26.)

§ 93-11-55. Application of Payments.

Any order of support issues by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (C. 1942, § 456.27; L. 1954, ch. 211, § 27.)

Cases

Orders of support entered in a responding State in conformity with the provisions of the Uniform Reciprocal Enforcement of Support Law do not supersede or modify a prior order of support embodied in a divorce decree of the initiating State. Howard v. Howard, 191, So.2d 528.

§ 93-11-57. Effect of Participation in Proceeding.

Participation in any proceedings under §§ 93-11-1 to 93-11-63 shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (C. 1942, § 456.28; L. 1954, ch. 211, § 28.)

§ 93-11-59. Form of Bill of Complaint.

The form of the bill of complaint for support under §§ 93-11-1 to 93-11-63 may be as follows:

STATE OF _____ COURT OF _____
_____

COUNTY OF _____

_____ (Complainant) vs. _____
(Defendant)

The complaint of _____ respectfully shows:

1. That she is the wife of _____, the defendant; that complainant was duly married to said defendant on or about (insert date) at (insert place of marriage), and now resides at (insert address).

2. That complainant is the mother and said defendant is the father of the following named dependent(s): (insert names and dates of birth of dependents, giving address where different from the address of the complainant).

3. That complainant and said child(ren) is (are) entitled to support from the defendant under the provisions of the Uniform Reciprocal Enforcement of Support Law of this State (Chapter ___, Laws of ___) copy of which is attached and made a part thereof.

4. That defendant, on or about (insert date), and subsequent thereof, refused and neglected to provide fair and reasonable support for complainant and the other dependent(s) according to his means and earning capacity (stating particulars).

5. That defendant was (is) present in the State of _____ during the period for which support is sought.

6. That upon information and belief, defendant now is residing or domiciled at (insert address and name of State), is earning $_____ per (week) (month), and is within the jurisdiction of the court of (insert name of court in responding State), which State has enacted a law substantially similar to the Uniform Reciprocal Enforcement of Support Law of this State.

(Where the mother of the dependent children is dead or unable for any reason to present such a bill of complaint, the same may be presented by any competent adult as next friend acting for and on behalf of such dependent children.)

WHEREFORE, the complainant prays for such an order for support, directed to said defendant, as shall be deemed to be fair and reasonable, and for such other and further relief as the law provides.

(Complainant)

Personally appeared before me (insert name of complainant) to me personally known and made oath that she has read the above bill of complaint and knows the contents thereof, and the same are true of her own knowledge except as to matters stated on information and belief, and as to these matters she believes them to be true.

_____
(Clerk of Court)

HISTORY: (C. 1942, § 456.30; L. 1954, ch. 211, § 30.)

§ 93-11-61. Form of Certificate of Chancery Court.

The form of the certificate of the chancery court acting either in term time or vacation may be as follows:

STATE OF _____ COURT OF _____

COUNTY OF _____ DOCKET NUMBER _____

_____ (Complainant)

vs.

_____ (Defendant)

The undersigned, the chancery court of _____ County of Mississippi (who may act either in term time or vacation) hereby certifies:

1. That on (insert date) a bill of complaint was verified by the above.named complainant and duly filed in this court in a proceeding against the above-named defendant commenced under the provisions of the Uniform Reciprocal Enforcement of Support Law (Chapter ___ Laws of _____) to compel the support of the dependent(s) named in that bill of complaint.

2. That the above-named defendant is believed to be residing or domiciled in (insert address and State), and that the court of (insert name of court in responding State) may obtain jurisdiction of the defendant or his property.

3. That the undersigned, the chancery court of _____ County, Mississippi, has examined the complainant under oath and she has reaffirmed the allegations contained in the bill of complaint; and that according to the testimony of the complainant the needs of dependent(s) named in the bill of complaint for support from the defendant are the sum of $___ per (week) (month).

4. That in the opinion of the undersigned Chancellor the defendant should be compelled to answer such bill of complaint and be dealt with according to law.

WHEREFORE, it is hereby ORDERED that this certificate together with certified copies of the bill of complaint be transmitted to the court of (insert name of court in the responding State).

_____
Chancellor

Dated_____, 19__.

At_____

HISTORY: (C. 1942, § 456.31; L. 1954, ch. 211, § 31.)

§ 93-11-63. Form of Testimony by Complainant.

The form of testimony by the complainant may be as follows:

STATE OF _____ COURT OF _____
COUNTY OF _____

_____ TESTIMONY OF
Complaintant _____ Complaintant
vs. Docket No. _____

_____
Defendant

(Insert name of complainant), the complainant herein, being duly sworn on her oath testifies as follows:

Q. What is your full name?

A.

Q. What is your present address?

A.

Q. When and where were you married to the defendant? (If complainant claims to be the common-law wife of the defendant, the following should also be answered.) When did you and defendant decide to assume the status of husband and wife? How was the assumption of this status made public? Where and for what length of time did you and defendant live together as husband and wife?

A.

Q. What were the circumstances leading to the separation from your husband?

A.

Q. Were any children born of this marriage?

A.

Q. Are you now pregnant?

A.

Q. What are the names and ages of the children now living?

A.

Q. Are they living with you?

A.

Q. When was it your husband last lived with you?

A.

Q. When and how much was his last contribution for support?

A.

Q. Is there a complaint or an order for support in any court?

A.

Q. Are you employed? What are your earnings?

A.

Q. Have you any other source of income? If so, what is the source and what is the amount thereof?

A.

Q. Are you and the children in good health?

A.

Q. Have you any debts outstanding?

A.

Q. What do you require for the support of yourself and children?

A.

Q. Do you know the present whereabouts of your husband? If so, please give his address.

A.

Q. Do you know if and where your husband is now employed? If so, state name and address of employer and give husband's Social Security number.

A.

Q. What is his salary, if you know?

A.

Q. Are you receiving public aid; and how much?

A.

Q. Give an accurate physical description of the defendant (color of hair, distinguishing marks, age, etc.), describe other names and aliases by which he is known and attach a recent photograph or snapshot of the defendant.

A.

Taken and sworn to before me this _____ day of _____ 19 ____.

_____

Complainant

_____

Chancellor

HISTORY: (C. 142, § 456.32; L. 1954, ch. 211, § 32.)

§ 93-11-65. Custody and Support of Minor Children; Additional Remedies.

In addition to the right to proceed under § 93.5.23, Mississippi Code of 1972, and in addition to the remedy of habeas corpus in proper cases, and other existing remedies, the chancery court of the proper county shall have jurisdiction to entertain suits for the custody, care, support and maintenance of minor children and to hear and determine all such matters, and shall, if need be, require bond, sureties or other guarantee to secure any order for periodic payments for the maintenance or support of a child. In the event a legally responsible parent has health insurance available to him or her through an employer or organization that may extend benefits to the dependent of such parent, any order of support issued against such parent may require him or her to exercise the option of additional coverage in favor of such children as he or she is legally responsible to support. Proceedings may be brought by or against a resident or nonresident of the State of Mississippi, whether or not having the actual custody of minor children, for the purpose of judicially determining the legal custody of a child. All actions herein authorized may be brought in the county where the child is actually residing, or in the county of the residence of the party who has actual custody, or of the residence of the defendant. Process shall be had upon the parties as provided by law for process in person or by publication, if they be nonresidents of the State or are not found therein after diligent search and inquiry or are unknown after diligent search and inquiry; provided that the court or chancellor in vacation may fix a date in term time or in vacation to which process may be returnable and shall have power to proceed in term time or vacation. Provided, however, that if the court shall find that both parties are fit and proper persons to have custody of the children, and that either party is able to adequately provide for the care and maintenance of the children, and that it would be to the best interest and welfare of the children, then any such child who shall have reached his twelfth birthday shall have the privilege of choosing the parent with whom he shall live.

Provided further, that where the proof shows that both parents have separate incomes or estates, the court may require that each parent contribute to the support and maintenance of the children in proportion to the relative financial ability of each.

Whenever the court has ordered a party to make periodic payments for the maintenance or support of a child, but no bond, sureties or other guarantee has been required to secure such payments, and whenever such payments as have become due

remain unpaid for a period of at least thirty (30) days, the court may, upon petition of the person to whom such payments are owing, or such person's legal representative, enter an order requiring that bond, sureties or other security be given by the person obligated to make such payments, the amount and sufficiency of which shall be approved by the court. The obligor shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case.

HISTORY: (C. 1942, § 1263.5; L. 1960, ch. 268; L. 1984, ch. 367; 1985, ch. 518, § 16, eff. from and after July 1, 1985.)

Cases

A person charged with being the natural father in a paternity action under both Miss.Code Ann. § 43-19-31 and Miss.Code Ann. § 93-9-9 is entitled to be sued in the county of his residence, in that the venue provision of Miss.CodeAnn. § 93-9-17 would control; however, if the chancellor could have sustained the requested motion to make the mother a party and also entertained the submitted cross-bill praying for custody, the chancery court of the First Judicial District of Hinds County would have authority to hear the case, because one of the issues would have been child custody, and Miss.Code Ann. § 93-11-65 would have been applicable. McCollum v. State Dept. of Public Welfare, 447 So.2d 650 (Miss., 1984).

A suit to establish paternity and child support brought by the Department of Public Welfare would be remanded for the chancellor to determine whether to hear all the issues, including a cross bill against the natural mother for custody and a motion to make her a party, in which case he would have authority to hear the case under § 93-11-65 in that one of the issues would be child custody, or to transfer venue to the county of the natural father's residence pursuant to § 93-9-17. Id.

Under § 93-11-65, both separated or divorced parents who have separate incomes or estates may be required to support their children according to their relative financial ability. Hailey v. Holden, 457 So.2d 947 (Miss., 1984).

This section Code 1942, § 1263.5 was intended to give the chancery court independent jurisdiction of suits for the custody of minor children and implements its constitutional power in this respect, and a custody proceeding brought to modify an agreed judgment entered in a prior habeas corpus proceeding will be treated as if brought under this section. Mitchell v. Powell, 253 M 867, 179 So.2d 811.

Assuming that the chancery court did not have jurisdiction to render a divorce decree, the court did have jurisdiction to entertain the proceeding with respect to the custody, care, support, and maintenance of the minor children of the parties where the husband to whom custody was awarded and the children were physically present within the county in which the action was brought at the time the decree was entered. Neal v. Neal, 217 So.2d 639.

Assuming that this section Code 1942, § 1263.5 is applicable in a habeas corpus hearing, it is not mandatory that the court accede to the desires of a 13-year-old boy as to which parent he preferred to live with, despite the fact that both parents were equally fit to be awarded custody of him. Mixon v. Bullard, 217 So.2d 28.

A father was entitled to regain custody of his minor son from the child's maternal grandmother, who had been awarded the custody previously, where a change in circumstances was shown in that, since his discharge from military service, the father had obtained a job as a barber earning approximately $80 per week, had additional income from the G. I. Bill, was attending college, had remarried and was living in a good neighborhood, and, further, that he had visited the child often in the home of the grandmother and had contributed regularly to the child's support. Thompson v. Foster, 244 So.2d 395.

A decree in a custody proceeding, adjudicating that a father had abandoned his child and awarding custody to the maternal grandmother, was not res judicata with respect to the father's petition in which he sought a modification of the decree on the ground of a change in circumstances, since such rule would be too rigid and inflexible for such a sensitive area of the law as the custody of a child, the most important consideration in such case being what is for the best interest of the child. Thompson v. Foster, 244 So.2d 395.

The rule being well established that a chancery court which grants the custody of children in a divorce proceeding has, as between the same parties, continuing exclusive jurisdiction to modify the decree upon subsequent changed circumstances, the chancery court in the county in which the children and divorced parents resided was without jurisdiction to modify the decree of custody entered by the chancery court of another county, notwithstanding the statute providing that an action to determine the legal custody of a child may be brought in the county where the child is actually residing, in the county of residence of a party who has actual custody, or in the county of the residence of the defendant. Reynolds v. Riddell, 253 So.2d 834.

In a divorce suit to which the maternal grandmother of children, whose custody was awarded to their mother, was not a party, the decree was not res judicata in the grandmother's subsequent custody suit, which she filed after the mother was killed in an automobile accident, on the question whether the father of the children was an unfit parent, and in such custody suit testimony relating to the father's character and conduct prior to the divorce decree was admissible. Boone v. Downey, 259 So.2d 710.

The authority of the court mentioned in Code 1942, § 1263.5, does not act to deprive the original chancery court of jurisdiction of child custody cases where custody has been awarded in a divorce proceeding previously filed, and this is true although the child is later removed to another county. Dubois v. Dubois, 275 So.2d 100.

Any child legitimized by Code 1972, § 91-1-15 is a child of the marriage within the meaning of Code 1972, § 93-11-65. Harper v. Harper (Miss.) 300 So.2d 132.

It was error to award custody of a minor child to her paternal grandparents rather than to her mother where, although the child had lived with the grandparents for approximately three-and-one-half years before the custody dispute and for briefer periods before then, the mother had visited frequently and sent gifts and there was no finding that she had abandoned her child or that she was unfit for her custody. Turner v. Turner (Miss.) 331 So.2d 903.

In a child custody proceeding brought by the mother pursuant to this section, the trial court's error in dismissing the mother's action was harmless where the court immediately held a full hearing on the father's petition for a writ of habeas corpus, which hearing was the same as would have been held under the mother's original suit; the trial court had jurisdiction to hear the mother's suit alleging a change of circumstances, where the Alabama court that had granted custody to the father had the right to modify the terms of the decree. Further, the trial court had complete jurisdiction to hear a child custody matter in a habeas corpus proceeding under § 11.43.1. Brashers v. Green (1979, Miss.) 377 So.2d 597.

In a proceeding under § 93-11-65 instituted in the chancery court of Coahoma County for the custody and support of a minor child, the chancellor properly overruled the defendant's motion to dismiss for lack of jurisdiction where the court would have jurisdiction over the case if it were determined that a 1978 Oklahoma divorce between the parties was valid. The chancery court of Rankin County did not possess continuing jurisdiction over the child as the result of a 1978 habeas corpus proceeding which awarded custody of the child to its father since a habeas corpus court is a special court convened to try a single case, and when a final judgment is rendered, its functions and powers cease; the holding in Leggett v. Leggett (1947) 202 Miss. 435, 32 So.2d 189, which held that the chancery court in a habeas corpus proceeding retains continuing jurisdiction over minor children is hereby overruled. Roach v. Lang (1981, Miss.) 396 So.2d 11.

§ 93-11-67. Personal Jurisdiction Over Nonresident Defendants.

(1) In an action for child support, a court may exercise personal jurisdiction over and enter a judgment in personam against a defendant if personal service of process is made as provided below and if the parties had resided in a marital relationship with each other in this State for thirty (30) days and if the complainant has continuously resided in this State after the defendant has become a nonresident.

(2) The defendant shall be personally served with a summons and a copy of the petition in the manner prescribed by the law of the State in which service is made or by any form of mail addressed to the defendant with a receipt showing personal delivery or by personal service outside this State in the manner prescribed for service within this State.

(3) Proof of service outside this State may be by affidavit of the individual who made service or in the manner prescibed by the law of this State or in the manner prescribed by the law of the State in which service is made. If service is by mail, proof may be a receipt signed by the defendant or other evidence of personal delivery to the defendant.

HISTORY: (L. 1978, ch. 453, § 1, eff. from and after July 1, 1978.)

Cases

Although it was proper under this section for a wife to join together in one action petitions for divorce and for child support, she did not obtain in personam jurisdiction over her nonresident husband, so as to support a decree of child support, where the required allegations that the parties had resided in the marital relationship with each other in this State for 30 days and that the wife had continuously resided in the State after the husband became a nonresident were not included in the bill of complaint. Fliter v. Fliter (1980, Miss.) 383 So.2d 1084.

§ 93-11-69. Provision of Information to Consumer Reporting Agency as to Overdue Support.

(1) As used in this section:

(a) "ABSENT PARENT" means a noncustodial parent from whom the Department of Public Welfare is collecting support payments.

(b) "CONSUMER REPORTING AGENCY" means any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(c) "DEPARTMENT" means the Department of Public Welfare.

(d) "OVERDUE SUPPORT" means any payments that are ordered by any court to be paid by an absent parent for the support of a child that have remained unpaid for at least thirty (30) days after payment is due. Overdue support shall also include payments that are ordered by any court to be paid for maintenance of a spouse in cases in which the department is collecting such support in conjunction with child support.

(2) The department shall make available to any consumer reporting agency a report of the amount of overdue support owed by an absent parent if the amount of overdue support is in excess of one thousand dollars ($1,000.00), upon request of a consumer reporting agency and payment of a reasonable fee by such agency.

(3) Before any information regarding an absent parent's overdue support may be made available pursuant to subsection (2) of this section, a notice of the request and a copy of the report shall be mailed to the absent parent at such parent's last known address and the absent parent shall be given the opportunity to contest the information contained in the report as follows:

(a) The absent parent may, within fifteen (15) days after such notice is mailed, contest the accuracy of the information contained in the report by filing with the department a brief written statement concerning the nature of the alleged inaccuracies.

(b) Upon receipt of such statement the department shall within a reasonable amount of time, re-examine the information contained in the report.

(c) If upon such re-examination the information in the report is found to be inaccurate, the department shall correct the information and send a copy of such corrected information to the absent parent.

(d) If upon such re-examination the information contained in the report is found to be accurate, the department shall notify the absent parent of this fact.

(e) Within ten (10) days after a copy of the re-examined information contained in the report is mailed to the absent parent, such absent parent may again contest the accuracy of such information by filing a brief written statement concerning

the alleged inaccuracies and the department shall clearly note in any report to the consumer reporting agency the fact that the information is disputed unless there are reasonable grounds to believe that the statement filed by the absent parent is frivolous or irrelevant.

(4) The fee charged by the department for furnishing a report pursuant to this section shall not exceed the actual cost of furnishing such report.

HISTORY: (L. 1985, ch. 518, § 12, eff. from and after July 1, 1985.)

§ 93-11-71. Judgment for Overdue Child Support.

Whenever a court orders any person to make periodic payments for the maintenance or support of a child, and whenever such payments as have become due remain unpaid for a period of at least thirty (30) days, the person to whom such payments are owed, or his legal representative, shall, upon complaint filed with any court of competent jurisdiction, be entitled to judgment against the obligor in such amount as the court determines to be equal to all such payments which are then due and owing. The obligor shall, as in other civil actions, be served with process and shall be entitled to a hearing in such case. Any judgment obtained under the provisions of this section shall, when entered on the judgment roll, operate as a lien upon all the property of the judgment debtor, both real and personal, within each county, or judicial district of a county having two (2) judicial districts, where so enrolled; and such judgment may be executed upon and enforced in the same manner and to the same extent as any other judgment.

HISTORY: (L. 1985, ch. 518, § 13, eff. from and after July 1, 1985.)

Orders for Withholding

§ 93-11-101. Definitions.

As used in §§ 93-11-101 through 93-11-119, the following words shall have the meaning ascribed to them herein unless the context clearly requires otherwise:

(a) "ORDER FOR SUPPORT" means any order of the chancery, circuit, county or family court, or any order from a court of a foreign jurisdiction enforceable in this State, which provides for periodic payment of funds for the support of a child, whether temporary or final, and includes any such order which provides for:

(i) Modification or resumption of, or payment of arrearage accrued under, a previously existing order; or

(ii) Reimbursement of support.

"ORDER FOR SUPPORT" shall also mean an order for support and maintenance of a spouse if a minor child is living with such spouse and the child support obligation with regard to such child is being enforced by the Department of Public Welfare.

(b) "COURT" means the court that enters an order for withholding pursuant to § 93-11-103(1).

(c) "CLERK OF THE COURT" means the clerk of the court that enters an order for withholding pursuant to § 93-11-103(1).

(d) "ARREARAGE" means the total amount of unpaid support obligations.

(e) "DELINQUENCY" means any payment under an order for support which becomes due and remains unpaid after an order for withholding has been entered.

(f) "DEPARTMENT" means the Mississippi Department of Public Welfare.

(g) "INCOME" means any form of periodic payment to an individual, regardless of source, including, but not limited to: wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, Federal or State government or any unit of local government, notwithstanding any other provisions of State or local law which limit or exempt income or the amount or percentage of income that can be withheld; provided, however, that income excludes:

(i) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, Federal, State and local taxes, Social Security and other retirement and disability contributions;

(ii) Any amounts exempted by Federal law;

(iii) Public assistance payments; and

(iv) Unemployment insurance benefits except as provided by law.

(h) "OBLIGOR" means the individual who owes a duty to make payments under an order for support.

(i) "OBLIGEE" means the individual to whom a duty of support is owed or the individual's legal representative.

(j) "PAYOR" means any payor of income to an obligor.

HISTORY: (L. 1985, ch. 518, § 1, eff. from and after July 1, 1985.)

§ 93-11-103. Entry of Order for Withholding; Content; Copies; Duration.

(1) Upon entry of any order for support by a court of this State on or after July 1, 1985, the court entering such order shall enter a separate order for withholding which shall not take effect unless the obligor becomes delinquent in paying the order for support or unless the obligor requests that the order take effect. The court entering such order may require the order for withholding to take effect immediately.

(2) An order for withholding shall be granted upon petition by the obligee or the department where an order for withholding has not been previously entered.

(3) The order for withholding shall:

(a) Direct any payor to withhold an amount equal to the order for support;

(b) Direct any payor to withhold an additional amount, not less than ten percent (10%) of the order for support, until payment in full of any delinquency stated in the notice of delinquency provided for in § 93-11-105;

(c) Direct the payor not to withhold in excess of the amounts allowed under § 303(b) of the Consumer Credit Protection Act, being 15 U.S.C.A. 1673, as amended; and

(d) State the rights, remedies and duties of the obligor under §§ 93-11-101 through 93-11-119.

(4) At the time the order for withholding is entered, the clerk of the court shall provide a copy of the order for withholding and the order for support to the obligor and shall make copies available to the obligee and the department. Any copy of the order for withholding furnished to the parties under this subsection shall be stamped "Not Valid."

(5) The order for withholding shall remain in effect for as long as the order for support upon which it is based.

(6) The failure of an order for withholding to State an arrearage is not conclusive of the issue of whether an arrearage is owing.

HISTORY: (L. 1985, ch. 518, § 2, eff. from and after July 1, 1985.)

§ 93-11-105. Notice of Delinquency; Service.

(1) Whenever an obligor becomes delinquent in payment of an amount equal to at least one (1) month's support obligation pursuant to the order for support the obligee may, and if the obligation is being enforced by the department the department shall, prepare and serve a verified notice of deliquency, together with a form petition to stay service.

(2) The notice of delinquency shall recite the terms of the order for support and contain a computation of the period and total amount of the delinquency, as of the date of the notice. The notice shall State the amount to be withheld and that the withholding applies to current and subsequent periods of employment. The notice shall clearly State that it will be sent to the payor, together with a specially certified copy of the order for withholding, unless the obligor files a petition to stay service in accordance with § 93-11-107.

(3) The notice of delinquency shall be served by either of the following methods:

(a) By prepaid certified mail addressed to the obligor at his or her last known address, return receipt requested; or

(b) By any method provided by law for service of summons.

HISTORY: (L. 1985, ch. 518 § 3, eff. from and after July 1, 1985.)

§ 93-11-107. Petition To Stay Service; Notice of Hearing.

(1) The obligor may prevent an order for withholding from being served by filing a petition to stay service with the clerk of the court within ten (10) days after service of the notice of delinquency; however, the grounds for the petition to stay service shall be limited to mistakes of fact that make the withholding improper or the amount of the withholding incorrect.

(2) The clerk of the court shall notify the obligor, and the obligee or the department, as appropriate, of the time and place of the hearing on the petition to stay service. The court shall hold such hearing pursuant to the provisions of § 93-11-113.

(3) Filing of a petition to stay service, within the ten-day period required under this section, shall prohibit the clerk of the court from serving the order for withholding on any payor of the obligor until a hearing is afforded the obligor and it is determined by the court that the contested order for withholding is proper.

HISTORY: (L. 1985, ch. 518 § 4, eff. from and after July 1, 1985.)

§ 93-11-109. Service of Order for Withholding; Prerequisites.

(1) In order to serve an order for withholding upon a payor, an obligee or the department shall follow the procedures set forth in this section. After ten (10) days following service of the notice of delinquency, the obligee or department shall file with the clerk of the court an affidavit, with the copy of the notice of delinquency attached thereto, stating:

(a) That the notice of delinquency has been duly served and the date on which service was effected; and

(b) That the obilgor has not filed a petition to stay service.

(2) Upon request of the obligee or the department, the clerk of the court shall:

(a) Make available any record of payment; and

(b) Determine that the file contains a copy of the affidavit described in subsection (1) of this section.

(3) Once the clerk has determined that the statutory requirements for service of the notice of delinquency and order for withholding have been met, the clerk shall serve such notice of delinquency and order for withholding on the payor, its superintendent, manager or other agent by certified mail or personal delivery.

HISTORY: (L. 1985, ch. 518, § 5, eff. from and after July 1, 1985.)

§ 93-11-111. Duties of Payor; Payments to Obligee; Fees.

(1) It shall be the duty of any payor who has been served with a copy of the specially certified order for withholding and a notice of delinquency to deduct and pay over income as provided in this section. The payor shall deduct the amount designated in

the order for withholding, as supplemented by the notice of delinquency, beginning with the next payment of income which is payable to the obligor after fourteen (14) days following service of the order and notice. The payor shall pay the amounts withheld to the department within the first ten (10) days of each month in accordance with the order for withholding and in accordance with any subsequent notification received redirecting payments. The department shall then forward such amounts to the obligee. For each withholding of income, the payor shall be entitled to receive a fee of two dollars ($2.00) to be withheld from the income of the obligor in addition to the support payments. Regardless of the amount designated in the order for withholding as supplemented by the notice of delinquency, the payor shall not withhold in excess of the amounts allowed under § 303(b) of the Consumer Credit Protection Act, being 15 U.S.C.A. 1673, as amended. A payor may combine all amounts that he is required to withhold and pay to the department in one (1) payment; provided, however, the payor must send to the department a list showing the amount of the payment attributable to each obligor.

(2) Whenever the obligor is no longer receiving income from the payor, the payor shall return a copy of the order for withholding to the department and shall forward the obligor's last known address and name and address of the obligor's new employer, if known to the department. The payor shall cooperate in providing further information for the purpose of enforcing §§ 93-11-101 through 93-11-119.

(3) Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or any other claims of creditors. Payment as required by the order for withholding shall be a complete defense by the payor against any claims of the obligor or his creditors as to the sum so paid.

(4) In cases in which the payor has been served more than one (1) order for withholding for the same obligor, the payor shall honor the orders on a first-come first-served basis and shall honor all such withholdings to the extent that the total amount withheld does not exceed the maximum amount specified in subsection (1) of this section.

(5) No payor shall discharge, discipline, refuse to hire or otherwise penalize any obligor because of the duty to withhold income.

HISTORY: (L. 1985, ch. 518, § 6, eff. from and after July 1, 1985.)

§ 93-11-113. Hearings; Interim Orders; Modification Suspension, or Termination of Orders.

(1) When an obligor files a petition to stay service, the court, after due notice to all parties, shall hear the matter within twenty (20) days after such petition is filed and shall enter an order granting or denying relief, amending the notice of delinquency, or otherwise resolving the matter. If the court finds no mistakes of fact that make the withholding improper the court shall order immediate service of the order for withholding. Where the court cannot promptly resolve any dispute over the amount of the delinquency, the court may order immediate service of the order for withholding as to any undisputed amounts specified in an amended notice of delinquency and may continue the hearing on the disputed amounts.

(2) At any time, an obligor, obligee, the department or clerk of the court may petition the court to:

(a) Modify, suspend or terminate the order for withholding because of a modification, suspension or termination of the underlying order for support; or

(b) Modify the amount of income to be withheld to reflect payment in full of the delinquency by income withholding or otherwise; or

(c) Suspend the order for withholding because of inability to deliver income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery.

(3) The clerk shall serve on the payor, by certified mail or personal delivery, a copy of any order entered pursuant to this section that affects the duties of the payor.

(4) The order for withholding shall continue to be binding upon the payor until service of any order of the court entered under this section.

HISTORY: (L. 1985, ch. 518, § 7, eff. from and after July 1, 1985.)

§ 93-11-115. Additional Notice Requirements; Records, Legal Forms, and Information.

(1) An obligee who is receiving income withholding payments under §§ 93-11-101 through 93-11-119 shall notify the department of any change of address within seven (7) days of such change.

(2) A obligee who is a recipient of public aid shall send a copy of any notice of delinquency filed pursuant to § 93-11-105 to the department.

(3) An obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to §§ 93-11-101 through 93-11-119 shall notify the department and the clerk of the court of any new payor, within seven (7) days.

(4) When the department is no longer authorized to receive payments for the obligee, it shall, within seven (7) days, notify the payor and the clerk of the court.

(5) The department shall provide notice to the payor and the clerk of the court of any other support payment made, including but not limited to, a set-off under Federal and State law or partial payment of the delinquency.

(6) The department shall maintain complete, accurate and clear records of all payments and their disbursements. Certified copies of payment records maintained by the department shall, without further proof, be admitted into evidence in any legal proceedings under §§ 93-11-101 through 93-11-119.

(7) The department shall design suggested legal forms for proceeding under §§ 93-11-101 through 93-11-119 and shall make available to the courts such forms and informational materials which describe the procedures and remedies set forth herein for distribution to all parties in support actions.

HISTORY: (L. 1985, ch. 518, § 8, eff. from and after July 1, 1985.)

§ 93-11-117. Penalties.

(1) In cases in which a payor wilfully fails to withhold or pay over income pursuant to a valid order for withholding, the court, upon due notice and hearing, shall enter judgment and direct the issuance of an execution for the total amount that the payor wilfully failed to withhold or pay over.

(2) In cases in which a payor discharges, disciplines, refuses to hire or otherwise penalizes an obligor as prohibited by subsection (5) of § 93-11-111, the court, upon due notice and hearing, may fine the payor in an amount not to exceed fifty dollars ($50.00).

(3) Any obligee, the department or obligor who wilfully initiates a false proceeding under §§ 93-11-119 shall be punished as in cases of contempt of court.

HISTORY: (L. 1985, ch. 518, § 9, eff. from and after July 1, 1985.)

§ 93-11-119. Relation to Other Rights, Remedies, Duties, and Penalties.

(1) The rights, remedies, duties and penalties created by §§ 93-11-101 through 93-11-119 are in addition to and not in substitution for any other rights, remedies, duties and penalties created by any other law.

(2) Nothing in §§ 93-11-101 through 93-11-119 shall be construed as invalidating any garnishment, attachment or assignment of wages or benefits instituted prior to July 1, 1985; provided, however, any such garnishment, attachment or assignment shall be subject to the priorities established under the provisions of subsection (3) of § 93-11-111.

HISTORY: (L. 1985, ch. 518, § 10, eff. from and after July 1, 1985.)

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MISSOURI

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§ 454.010. Purposes.

The purposes of §§ 454.010 to 454.360 are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (L. 1959, S.B. No.118, § 1.)

Cases

In general.

Greater child support may be sought under the Uniform Reciprocal Enforcement of Support Act even if husband is not delinquent in payments required by foreign divorce decree or is not a runaway. Olson v. Olson (App.1976) 534 S.W.2d 526.

Uniform Reciprocal Enforcement of Support Act must be liberally construed to meet cases fairly within spirit or reason of law, resolving all reasonable doubts in favor of its applicability to particular case. Id.

Standards of proof applicable to criminal cases for failure to provide child support were not appropriate in action for child support under Uniform Enforcement of Support Law. Smith v. Smith (App.1972) 485 S.W.2d 143.

Even though mother alleged that father was an able-bodied person, where complaint was brought under the Uniform Reciprocal Enforcement of Support Law to obtain support of minor child living with mother in another State and support proceeding was basically civil in nature, mother did not have to prove that father of child was able-bodied and capable of supporting the dependent child. Id.

Uniform Enforcement of Support Law specifying that remedies set out therein are in addition to and not substitution for other remedies was not intended to take away right of party to pursue enforcement of prior order of support in divorce decree but provides additional means of enforcing support and was not intended to create exception where Missouri court has granted a divorce previously. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Id.

§ 454.020. Definitions.

In §§ 454.010 to 454.360 unless the context otherwise requires:

(1) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

(2) "COURT" means the circuit court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(3) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support payments which are past due and unpaid.

(4) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any territory covered by the provisions of §§ 454.010 to 454.360.

(5) "INITIATING COURT" means the court in which a proceeding is commenced.

(6) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(7) "LAW" includes both common and statute law.

(8) "OBLIGEE" means any person to whom a duty of support is owed and a State or political subdivision thereof.

(9) "OBLIGOR" means any person owing a duty of support.

(10) "REGISTER" means to file in the Registry of Foreign Support Orders as required by the court.

(11) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(12) "RENDERING STATE" means any State in which a support order is originally entered.

(13) "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(14) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(15) "STATE" includes any State, territory, or possession of the United States, the District of Columbia, and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(16) "SUPPORT ORDER" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission, regardless of the kind of action in which it is entered.

HISTORY: (Am.L. 1982, p. 642, § A.)

Cases

In general.

A duty of support "imposable by law" within meaning of Uniform Reciprocal Enforcement of Support Act is one arising out of relationship, a duty of support to be adjudicated and reduced to decretal form in responding State upon proper evidence at hearing after due notice to defendant. Olson v. Olson (App.1976) 534 S.W.2d 526.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of Uniform Reciprocal Enforcement of Support Law. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

§ 454.030. Remedies Additional to those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1959, S.B. No.118, § 1.)

Cases

Construction and application.

Greater child support may be sought under the Uniform Reciprocal Enforcement of Support Act even if husband is not delinquent in payments required by foreign divorce decree or is not a runaway. Olson v. Olson (App.1976) 534 S.W.2d 526.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Uniform Enforcement of Support Law specifying that remedies set out therein are in addition to and not substitution for other remedies was not intended to take away right of party to pursue enforcement of prior order of support in divorce decree but provides additional means of enforcing support and was not intended to create exception where Missouri court has granted a divorce previously. Id.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of Uniform Reciprocal Enforcement of Support Law. Id.

California superior court judgment awarding divorced wife sum of $15 per week for support of child of marriage was not res judicata of issue of child support or of issue of wife's claim for her support and maintenance, as to which California court made no order, and did not preclude counterclaim of wife who sought judgment for support in a larger amount and sought support for herself to date of her divorce. Elsner v. Elsner (App.1967) 425 S.W.2d 254.

Judgment under Uniform Reciprocal Support of Dependants Act, "Runaway Pappy Act," does not bar further action for maintenance and support. Id.

Under Uniform Reciprocal Enforcement of Support Law, prosecuting attorney is required to seek appropriate orders of execution and garnishment where cause has been forwarded to and docketed within this State if such action is necessary to implement an order of support issued by State court. Op.Atty.Gen. No. 200, Steck, 9-10-62.

This section did not entitle wife, after having availed herself of remedies provided by divorce statutes of State, to thereafter proceed in court of concurrent jurisdiction in State to enforce same rights involved in first action. Welch v. McIntosh (App. 1956) 290 S.W.2d 181.

§ 454.040. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 454.070, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

A father is liable for support of his illegitimate child. N.R. v. R.J.D., 588 S.W.2d 76, appeal after remand 655 S.W.2d 733 (Mo.App., 1979).

Money spent by mother or by a third person to provide for an illegitimate child and for lying in expenses are recoverable against father under theory of quasi-contract. Id.

Construction and application.

A father has duty to support his minor children and such duty extends to a minor child across a State line. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

Person proceeding under the Uniform Support of Dependents Law would be required to file security for costs, or a deposit if a nonresident, and would be subject to the rules of the circuit court in regard to costs. Op.Atty.Gen. No. 68, O'Toole, 11-21-52.

§ 454.050. Interstate rendition.

The Governor of this State may:

(1) Demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State;

(2) Surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Dismissal of proceeding under Uniform Reciprocal Enforcement of Support Law on ground that jurisdiction of court which granted divorce was exclusive constituted error. Walker v. Walker, 570 S.W.2d 339 (Mo.App., 1978).

California divorce decree requiring husband to pay $50 a month support for each child did not bar wife from bringing action under the Uniform Reciprocal Enforcement Act seeking increase in support. Olson v. Olson (App.1976) S.W.2d 526.

Court lacked jurisdiction of habeas corpus petition whereby petitioner, in challenging extradition proceedings, questioned constitutionality of foreign statute under which he was charged. State ex. rel. Anderson v. Weinstein (App.1962) 359 S.W.2d 355.

Uniform Support of Dependents Law, former § 454.010 et seq., does not place upon State the obligation of paying costs incident to extradition for crime of failing to support as provided in § 559.350 and obligation to pay costs rests with county. Op.Atty.Gen. No. 24, Downs, 10-29-53.

§ 454.060. Conditions of Interstate Rendition.

(1) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person the Governor of this may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee brought an action for the support under §§ 454.010 to 454.360, or that the bringing of an action would be of no avail.

(2) When under this or a substantially similar law, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under §§ 454.010 to 454.360 or would be effective.

(3) If an action for support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(4) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(5) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.070. Choice of Law.

Duties of support applicable under this law are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Uniform Reciprocal Enforcement of Support Law did not preclude former wife from applying for registration under Uniform Enforcement of Foreign Judgments Law of California judgment of dissolution of marriage and related child support orders. Siegel v. Mosier, 632 S.W.2d 76 (Mo.App., 1982).

Since Missouri Uniform Reciprocal Enforcement of Support Act authorizes finding of duty of support, which may be any duty of support imposed or imposable by law, and since in Missouri father is liable for support of his illegitimate child, putative father of child owed a legal duty of support for child, despite fact that law of Iowa, where mother filed petition for support under Act prior to transfer to Missouri, provided that there should be no liability for support against putative father unless and until he is adjudicated to be child's father by court of competent jurisdiction. State of Iowa, ex rel., Nauman v. Troutman, 623 S.W.2d 269 (Mo.App., 1981).

Legislature may provide exceptions to rule that court granting divorce has continuing, exclusive jurisdiction of care, custody and maintenance of children until they reach majority. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Id.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of Uniform Reciprocal Enforcement of Support Law. Id.

§ 454.080. Remedies of State or Subdivision Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support. The State also may recover arrearages owed to the obligee under a court order or judgment and assigned to the State as a condition of eligibility for benefits under the aid to families with dependent children program.

HISTORY: (Am.L. 1982, p. 643, § A.)

Cases

In general.

Evidence that father did not feel that he was obligated to furnish any support for children and did not contribute to their support following divorce, that mother did not have the means to support the children at the time that aid to families with dependent children was given to them, and that the aid was necessary for the children's support showed that the aid was a necessity so the State could seek reimbursement for that aid from the father, even though he had not been ordered to pay child support by any divorce decree. State, Div. of Family Services v. Hollis (App.1982) 639 S.W.2d 389.

Uniform Reciprocal Enforcement of Support Law specifying that remedies set out therein are in addition to and not substitution for other remedies was not intended to take away right of party to pursue enforcement of prior order of support in divorce decree but provides additional means of enforcing support and was not intended to create exception where Missouri court has granted a divorce previously. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Id.

Under Uniform Reciprocal Enforcement of Support Law, prosecuting attorney is required to seek appropriate orders of execution and garnishment where cause has been forwarded to and docketed within this State if such action is necessary to implement an order of support issued by State court. Op.Atty.Gen. No. 200, Steck, 9-10-62.

Evidence that father did not feel that he was obligated to furnish any support for children and did not contribute to their support following divorce, that mother did not have the means to support the children at the time that aid to families with dependent children was given to them, and that the aid was a necessity so the State could seek reimbursement for that aid from the father, even though he had not been ordered to pay child support by any divorce decree. State, Div. of Family Services v. Hollis (App.1982) 639 S.W.2d 389.

§ 454.090. Enforcement Irrespective of Relation of Parties.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under the provisions of §§ 454.010 to 454.360, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (Am.L. 1982, p. 643, § A.)

Cases

In general.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of Uniform Reciprocal Enforcement of Support Law. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Id.

The circuit court of Jackson County, of which defendant-husband was a resident, had jurisdiction of proceeding under Uniform Reciprocal Enforcement of Support Law certified from court in Arizona to which wife had moved following divorce. Id.

Person proceeding under the Uniform Support of Dependents Law, former § 454.010 et seq., would be required to file security for costs, or a deposit if a nonresident, and would be subject to the rules of the circuit court in regard to costs. Op.Atty.Gen. No. 68, O'Toole, 11-21-52.

§ 454.100. Jurisdiction; Circuit Judge to Hear Proceedings; Exception.

Jurisdiction of all proceedings hereunder is vested in the circuit court. Such proceedings shall be heard by a circuit judge, except that said proceedings may be heard by an associate circuit judge if he is assigned to hear such case or class of cases or if he is transferred to hear such case or class of cases pursuant to other provisions of law or § 6 or art. V of the Constitution.

HISTORY: (Am.L. 1978, p. 828, § A (§ 1), eff. Jan. 2, 1979.)

Cases

In general.

Dismissal of proceeding under Uniform Reciprocal Enforcement of Support Law on ground that jurisdiction of court which granted divorce was exclusive constituted reversible error. Walker v. Walker (App.1978) 576 S.W.2d 339.

Dismissal of proceeding under Uniform Reciprocal Enforcement of Support Law on ground that jurisdiction of court which granted divorce was exclusive constituted reversible error. Walker v. Walker (App.1978) 570 S.W.2d 339.

Jurisdiction of divorce court is not exclusive in enforcement of duty of support and the Uniform Reciprocal Enforcement of Support Act provides additional and supplemental remedy to enforce such duty. Olson v. Olson (App.1976) 534 S.W.2d 526.

Legislature may provide exceptions to rule that court granting divorce has continuing, exclusive jurisdiction of care, custody and maintenance of children until they reach majority. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

The circuit court of Jackson County, of which defendant-husband was a resident, had jurisdiction of proceeding under Uniform Reciprocal Enforcement of Support Law certified from court in Arizona to which wife had moved following divorce. Id.

§ 454.103. Repealed by L. 1959, S.B. No. 118, § 1.

§ 454.105. Jurisdiction of Court, Limited, How.

Participation in any proceeding under §§ 454.010 to 454.360 does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (L. 1982, p. 643, § A.)

§ 454.107. Repealed by L. 1959, S.B. No. 118, § 1.

§ 454.110. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or

attach to the petition any information which may help in locating or identifying the defendant such as a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (L. 1969, S.B. No. 118, § 1.)

Cases

Construction and application.

Where divorced wife in preparing petition for support followed a form designed for situation where support is sought from husband and father for wife and family but it was apparent that plaintiff intended to seek support only for her minor child, court would treat as surplusage those allegations in petition which indicated that plaintiff was seeking support for herself. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

§§ 454.113 to 454.117. Repealed by L. 1959, S.B. No.118, § 1.

§ 454.120. Prosecuting Attorney to Represent Plaintiff, When.

The prosecuting attorney upon the request of the court or of the State Division of Welfare shall represent the plaintiff in any proceeding under §§ 454.010 to 454.360.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

Garnishment.

Under Uniform Reciprocal Enforcement of Support Law, prosecuting attorney is required to seek appropriate orders of execution and garnishment where cause has been forwarded to and docketed within this State if such action is necessary to implement an order of support issued by State court. Op.Atty.Gen. No. 200, Steck, 9-10-62.

§ 454.125. Repealed by L. 1959, S.B. No. 118, § 1.

§ 454.130. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

Construction and application.

Where suit under Uniform Reciprocal Enforcement of Support Act of Virginia, which was transferred to Missouri court was brought in name of divorced wife and not in name

of "obligee" who was the minor child, by a guardian, curator, or next friend, and in petition there was no allegation that plaintiff had legal custody of obligee, but there was attached to petition answers of plaintiff to some question asked by judge of Virginia court in which she stated that "divorce court" granted her custody of the child, court would treat the questions and answers as an exhibit to petition. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

§ 454.140. Duty of Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate and (3) §§ 454.010 to 454.360 to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.150. Costs and Fees.

An initiating court shall not require the payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor. A responding court shall not require the payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for the filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor be paid in whole or in part by the obligor or by the appropriate county of the initiating State. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (Am.L. 1982, p. 643, § A.)

Cases

In general.

Where prosecuting attorney assumed statutory duty to prosecute case under the Uniform Reciprocal Enforcement of Support Act but wife, for no good reason shown, voluntarily elected to employ private counsel, wife, not husband, was liable for legal services rendered by her private counsel. Olson v. Olson (App.1976) 534 S.W.2d 526.

Fees in civil cases applies to Uniform Support cases and such fees may be taxed under this section, and if collected from the county or from individuals 50 percent is to be paid pursuant to § 483.541 to the director of revenue. Op.Atty.Gen. No. 280, Banta, 11-20-72.

§ 454.160. Jurisdiction by Arrest.

If a court of this State believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process.

Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (Am. by L. 1982, p. 643, § A.)

Cases

In general.

Jurisdiction of divorce court is not exclusive in enforcement of duty of support and the Uniform Reciprocal Enforcement of Support Act provides additional and supplemental remedy to enforce such duty. Olson v. Olson (App.1976) 534 S.W.2d 526.

§ 454.170. State Information Agency, Duties.

The Division of Welfare is hereby designated as the "State Information Agency" under §§ 454.010 to 454.360, and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under §§ 454.010 to 454.360 and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law, and

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under §§ 454.010 to 454.360.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.180. Duty of Court and Officials of this State as Responding State.

(1) After the court of this State acting as a responding State has received from the court of the initiating State the aforesaid copies the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) It shall be the duty of the prosecuting attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the defendant or his property and shall request the court to set a time and place for a hearing.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Uniform Support of Dependents Act, former § 454.010 et seq., gives no authority for hearing matters beyond the scope of the chapter, and application of § 509.430 permitting a defendant in a civil case to set forth as a counterclaim matters different in kind from that sought in the pleading of the opposing party did not apply to a proceeding under the Support of Dependents Act, and circuit court would therefore be prohibited from taking any further action upon husband's cross bill for divorce which he filed in proceeding brought under such act, except to dismiss it. State ex rel. Schwartz v. Buder (App.1958) 315 S.W.2d 867.

In proceeding under Uniform Support of Dependents Law, former § 454.010 et seq., defendant did not waive his objections to constitutionality of law by waiting until offer of evidence before presenting that issue where there was no requirement under law that defendant file an answer or any other pleading, court never obtained jurisdiction of defendant until he entered his appearance and waived notice, and defendant announced that he wanted to make objections to constitutionality of law before evidence was offered so that he injected the question at earliest moment good pleading and orderly procedure would permit. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

§ 454.190. Prosecuting Attorney To Trace Defendant; Transmission of Proceedings.

(1) The prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(2) If the defendant or his property is not found in the county and the prosecuting attorney discovers by any means that the defendant or his property may be found in another county of this State or in another State he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon both the court of the other county and any court of this State receiving the documents and the prosecuting attorney have the same powers and duties under §§ 454.010 to 454.360 as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(3) If the prosecuting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.200. Duty To Support, Hearing To Determine, Evidence Allowed, Defenses Allowed; Paternity, How Adjudicated.

(1) If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon the request of either party, shall continue the hearing to permit evidence relative to the duty of support to be introduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

(2) If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment.

(3) If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and, if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue; otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (Am.L. 1982, p. 643, § A.)

Cases

Provision in Uniform Reciprocal Enforcement of Support Law stating continuance may be granted if obligor of support payments offers evidence constituting a degree where obligee is not present at hearing indicates that, if obligor does not contest allegations, they are to be taken as true; it does not make allegations prima facie correct in a contested hearing. Stanislaus County v. Pratt, 688 S.W.2d 410 (Mo.App., 1985).

County's petition for reimbursement under Uniform Reciprocal Enforcement of Support Law was properly dismissed when no evidence was presented in support of petition. Id.

§ 454.210. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under §§ 454.010 to 454.360. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.220. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Since Missouri Uniform Reciprocal Enforcement of Support Act authorizes finding of duty of support, which may be any duty of support imposed or imposable by law, and since in Missouri father is liable for support of his illegitimate child, putative father of child owed a legal duty of support for child, despite fact that law of Iowa, where mother filed petition for support under Act prior to transfer to Missouri, provides that there should be no liability for support against putative father unless and until he is adjudicated to be child's father by court of competent jurisdiction. State of Iowa, ex rel., Nauman v. Troutman, 623 S.W.2d 269 (Mo.App., 1981).

Father's obligation to pay child support prospectively was not relieved by concealment of the children from father by their mother over ten-year period so that their whereabouts were unknown to him. Borring v. Winters, 620 S.W.2d 31 (Mo.App., 1981).

In that the Uniform Reciprocal Enforcement of Support Act does not contain provision for award of temporary support, circuit court could not in effect make such an award by making its final support award retroactively effective as of date of serving of process. Olson v. Olson (App. 1976) 534 S.W.2d 526.

Standards of proof applicable to criminal cases for failure to provide child support were not appropriate in action for child support under Uniform Enforcement of Support Law. Smith v. Smith (App.1972) 485 S.W.2d 143.

Even though mother alleged that father was an able-bodied person, where complaint was brought under the Uniform Reciprocal Enforcement of Support law to obtain support of minor child living with mother in another State and support proceeding was basically civil in nature, mother did not have to prove that father of child was able-bodied and capable of supporting the dependent child. Id.

Legislature may provide exceptions to rule that court granting divorce has continuing, exclusive jurisdiction of care, custody and maintenance of children until they reach majority. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Under Uniform Reciprocal Enforcement of Support Law prosecuting attorney is required to seek appropriate orders of execution and garnishment where cause has been forwarded to and docketed within this State if such action is necessary to implement an order of support issued by State court. Op.Atty.Gen. No. 200, Steck, 9-10-62.

Discretion.

Determination of amount of child support to be awarded in action under the Uniform Reciprocal Enforcement of Support Act is matter of sound judicial discretion and trial court's exercise of that discretion will not be set aside unless an abuse of discretion clearly appears. Olson v. Olson (App.1976) 534 S.W.2d 526.

The entry of a temporary support order is discretionary. Id.

Evidence.

Evidence showing, inter alia, expenses incurred by wife for two children and husband's expenses and income supported award of child support of $27.50 per week for each child to wife who filed petition under the Uniform Reciprocal Enforcement of Support Act. Olson v. Olson (App.1976) 534 S.W.2d 526.

Court in responding State may make its own determination of needs of party invoking Uniform Reciprocal Enforcement of Support Act and has power to make such support order as justice requires; if evidence in case entitles petitioner to award of child support greater than prior divorce decree required payments may be increased by court in responding State, and prior foreign decree awarding lesser sum does not bar such relief. Id.

§ 454.230. Copy of Orders of Support Transmitted to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (L.1959, S.B. No. 118, § 1.)

§ 454.240. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power:

(1) To subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular;

(2) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(3) To require the defendant to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary; and

(4) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Powers given to responding court by Uniform Reciprocal Enforcement of Support Law include requiring defendant to pay lesser amount than that required to be paid by order or judgment of initiating State. Swan v. Shelton (App.1971) 469 S.W.2d 943.

§ 454.250. Duties of Clerk When Acting as Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(2) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.260. Clerk To Disburse Payments by Defendant from Responding State.

The courts of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.270. Proceedings Not To Be Stayed; Support Order Pendente Lite, When.

A responding court shall not stay the proceeding or refuse a hearing under the provisions contained in §§ 454.010 to 454.360 because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition pending, the court before which such petition is pending may conform its support order to the amount allowed in the other action or proceeding. Thereafter, such court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (Am.L. 1982, p. 644, § A.)

Cases

In general.

Application of the Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of the Uniform Reciprocal Enforcement of Support Law. Id.

§ 454.275. Appeal of Support Order by Director, When.

If the Director of the Division of Family Services is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may perfect an appeal to the proper appellate court if the support order was issued by a court of this State.

HISTORY: (L. 1982, p. 644, § A.)

§ 454.280. Application of Payments.

No order of support issued by a court of this State when acting as a responding State shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

No court of State when acting as responding State as to petition filed under the Uniform Reciprocal Enforcement of Support Act may issue an order superseding foreign support order, in the sense of suspending or staying its operation. Olson v. Olson (App.1976) 534 S.W.2d 526.

Previous action for divorce, which has altered status of parties, or absence of any divorce proceeding does not affect right to seek enforcement of support obligations by utilizing provisions of Uniform Reciprocal Enforcement of Support Law. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Id.

§ 454.290. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.300. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (L. 1959, S.B. No.118, § 1.)

Cases

In general.

Where defendant moved to quash petition for registration and confirmation of Illinois divorce decree on ground that enforcement was barred by § 516.350 creating conclusive presumption of payment after ten years and plaintiff alleged that defendant had paid plaintiff sums on original judgment within the ten-year period but record was not clear as to whether such payments were on original judgment or some other order of support, case must be remanded for further proceedings to determine that issue. Swan v. Shelton (App.1971) 469 S.W.2d 943.

§ 454.310. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.320. Petition for Registration.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

§ 454.330. Jurisdiction and Procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Jurisdiction of divorce court is not exclusive in enforcement of duty of support and the Uniform Reciprocal Enforcement of Support Act provides additional and supplemental remedy to enforce such duty. Olson v. Olson (App.1976) 534 S.W.2d 526.

Legislature may provide exceptions to rule that court granting divorce has continuing, exclusive jurisdiction of care, custody and maintenance of children until they reach majority. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

The circuit court of Jackson County, of which defendant-husband was a resident, had jurisdiction of proceeding under Uniform Reciprocal Enforcement of Support Law certified from court in Arizona to which wife had moved following divorce. Id.

§ 454.340. Effect and Enforcement.

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases.

HISTORY: (L. 1959, S.B. No. 118, § 1.)

Cases

In general.

Uniform Enforcement of Support Law specifying that remedies set out therein are in addition to and not substitution for other remedies was not intended to take away right of party to pursue enforcement of prior order or support in divorce decree but provides additional means of enforcing support and was not intended to create exception where Missouri court has granted a divorce previously. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

§ 454.350. Uniformity of Interpretation.

This law shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1959, S.B. No. 118, § 1 (§ 454.360).)

Cases

In general.

Uniform Reciprocal Enforcement of Support Act must be liberally construed to meet cases fairly within spirit or reason of law, resolving all reasonable doubts in favor of its applicability to particular case. Olson v. Olson (App.1976) 534 S.W.2d 526.

Application of Uniform Reciprocal Enforcement of Support Law is not limited to situations in which no prior Missouri divorce decree has provided for support payments. Paul v. Paul (Sup.1969) 439 S.W.2d 746.

§ 454.355. Provisions of Law Applicable, When; Court Has Duties of a Responding State, When.

The provisions contained in §§ 454.010 to 454.360 apply if both the obligee and the obligor are in this State but in different counties, or if both the obligor and obligee are residents of the same county. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property the clerk of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents

shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for this State as a responding State, including, but not limited to, the registration of an order for support entered by another court within this State. Such a registered order shall have the same effect and may be enforced as if originally entered by the court of the responding county.

HISTORY: (L. 1982, p. 644, § A.)

§ 454.360. Short Title.

§§ 454.010 to 454.360 may be cited as the "Uniform Reciprocal Enforcement of Support Law."

HISTORY: (L. 1959, S.B. No. 118, § 1 (§454.370).)

Cases

Validity.

The Missouri Uniform Support of Dependents Law, former § 454.010 et seq., is not unconstitutional as being retrospective in its operation as applied to father upon whom there was no duty to support any dependent he might have had except a dependent residing in Missouri when father returned to Missouri in 1950 prior to enactment of the law which duty came into being on effective sate of the law in 1951, since the law does not impose a duty to support minor child but merely provides procedure for enforcing an otherwise existing duty. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

The Missouri Uniform Support of Dependents Law, former § 454.010 et seq., as applied to father against whom a petition for support of minor child was filed in Virginia whose court under Uniform Reciprocal Enforcement of Support Act transmitted the petition, etc., to Missouri court, is not unconstitutional as depriving him of due process because of absence of requirement of notice to father of proceeding before Virginia court, since filing of petition in Virginia court did not result in any judgment or action taken adverse to father and court in responding State is not bound by recommendations of court in initiating State nor is it bound by proof presented before the court. Id.

The Missouri Uniform Support of Dependents Law, former § 454.010 et seq., as applied to father against whom a petition for support of minor child was filed by divorced wife in Virginia under Uniform Reciprocal Enforcement of Support Act was not unconstitutional as depriving him of due process because he was not afforded an opportunity to cross-examine divorced wife concerning matters contained in her testimony taken before Virginia court and offered in evidence in proceeding in Missouri court, since Missouri law does not require introduction in evidence of such testimony or consideration of it by the Missouri court. Id.

The Missouri Uniform Support of Dependents Law, former § 454.010 et seq., was not unconstitutional as in violation of provision of Federal Constitution that no State shall, without consent of Congress enter into any agreement or compact with another State, since there is nothing in law requiring or contemplating an agreement or compact with other States. Id.

Construction and application.

The Uniform Support of Dependents Act, former § 454.010 et seq., was a special procedure statute to which provisions of the Code of Civil Procedure did not apply. State ex rel. Schwartz v. Buder (App.1958) 315 S.W.2d 867.

Even if Missouri Uniform Support of Dependents Law, former § 454.010 et seq., constituted a compact with another State, it did not increase or decrease political power, and hence was not void but at most was voidable. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

The Uniform Support of Dependents Law, former § 454.010 et seq., was designed for the better enforcement of obligations of support, and provides for a two-State suit begun in the State where the family has been deserted, and terminating in the State where the one owing the duty of support is found. State ex rel. Whatley v. Mueller (App.1956) 288 S.W.2d 405.

The Uniform Support of Dependents Law, former § 454.010 et seq., was remedial, and therefore was to be liberally construed. Id.

The Uniform Support of Dependents Law, former § 454.010 et seq., was to be construed so as to meet the cases, which were clearly within the spirit or reason of the law, or within the evil, which it was designed to remedy, provided that such an interpretation was not inconsistent with the language used, and resolving all reasonable doubts in favor of the applicability of the statute to the particular case. Id.

Purpose of Act.

The chief purpose of the Uniform Support of Dependents Act, former § 454.010 et seq., was to supplant inadequate laws for the enforcement of the duty to support upon a deserting husband who had abandoned his family and was beyond the process of the State where his family resided. State ex rel. Schwartz v. Buder (App.1958) 315 S.W.2d 867.

The plain purpose of the Uniform Support of Dependents Act, former § 454.010 et seq., was only to enforce the payment of support which the defendant was legally obligated to pay, and it had no relation to changing the marital status of the parties. Id.

One of the primary purposes of Uniform Reciprocal Enforcement of Support Act was to ensure that he who performed a man's part in procreation should also perform a man's part in providing support for his progeny. Ivey v. Ayers (Sup.1957) 301 S.W.2d 790.

INTERSTATE CHILD SUPPORT ENFORCEMENT LAWS DIGEST

URESA Laws - Volume II
Montana-Wyoming

PS 018226

Preface

The Interstate Child Support Enforcement Laws Digest is a collection of interstate laws pertaining to child support enforcement, both Uniform Reciprocal Enforcement of Support Acts (URESA) and non-URESA laws. The first two volumes represent each State's URESA's laws. The next volume, forthcoming, will focus on related interstate laws implemented in the 54 jurisdictions of the United States.

This statute and case law information is not readily available to prosecutors and caseworkers in local offices. Nowhere else can it be found in one publication. The availability of this information in one publication should aid in interstate case processing. The Digest will also be a valuable complement to the National Roster and URESA/IV-D Referral Guide published by the National Child Support Enforcement Association.

The Digest will allow prosecutors and caseworkers to find the most current law for any of the 54 jurisdictions. It is organized for easy access to particular sections of a State's Code. State abbreviations are found with the appropriate page numbers for each State's code, and each code is accompanied by an individual table of contents. In addition, binders and sets of 54 tabs can be ordered from the National Institute for Child Support Enforcement for a nominal fee (see form at the back of the publication).

These first two volumes of the Interstate Digest, like their predecessor, the URESA Laws Digest, are a compilation of URESA codes and the case notes that appear in the annotated codes of the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. They include, in addition to original State laws, statutes enacted or amended since the publication of the URESA Laws Digest in October, 1984. They also include annotations of new cases that interpret State URESA laws and older cases and statutes that were omitted from the URESA Laws Digest.

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MONTANA
MONT. CODE ANN. PT. 1, §§ 40-5-101 to 40-5-142

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§ 40-5-101. Short Title.

This part may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)."

HISTORY: (Enact.L. 1969, § 42, ch. 237; R.C.M. 1947, 93-2601-82.)

Cases

Personal jurisdiction over tribal member.

Where the respondent had previously married the appellant, an enrolled member of the Crow Indian Tribe living on the Crow Indian Reservation, in Colorado and been separated from him there and brought a Uniform Reciprocal Enforcement of Support Act (URESA) action in Colorado for enforcement of child support payments, the District Court erred in denying the appellant's motion to dismiss for lack of personal jurisdiction over the appellant. All of the appellant's off-reservation contacts are with Colorado, not with Montana. Under the reasoning of State ex re. Flammond v. Flammond,---M---, 621 P.2d 471, 37 St. Rep. 1991 (1980), the court had neither subject matter nor personal jurisidiction. State ex rel. Three Irons v. Three Irons,---M---, 621 P.2d 476, 37 St.Rep. 2016 (1980).

No jurisdiction in Montana courts over reservation Indian.

The wife appealed the dismissal of her action seeking to enforce child support payments under the Uniform Reciprocal Enforcement of Support Act (URESA). The District Court ruled it had no jurisdiction, and the Supreme Court agreed there was neither subject matter jurisdiction nor personal jurisdiction. The husband was a Blackfoot Indian living on the reservation in Montana. Jurisdiction could not be found in Federal enabling statutes because neither the tribe nor the State complied with them; there were no off-reservation acts in Montana sufficient to vest State courts with jurisdiction over the husband; and a reservation Indian's domicile on the reservation is not an in-State contact that grants jurisdiction to State courts. The father had not acquiesced in State jurisdiction and has challenged State court jurisdiction from the outset. The fact that there was no appeal from the tribal court, the only avenue open to the wife, to the Federal court system was not an argument in favor of State court jurisdiction. There must be a legal basis supporting State jurisdiction. State ex rel. Flammond v. Flammond,---M---, 621 P.2d 471, 37 St. Rep. 1991 (1980).

§ 40-5-102. Purposes.

The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (Enact.L. 1969, § 1, ch. 237; R.C.M. 1947, 93-2601-41.)

§ 40-5-103. Definitions.

(1) "COURT" means the District Court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this part.

(4) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(5) "LAW" includes both common and statutory law.

(6) "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State of political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "REGISTER" means to file in the Registry of Foreign Support Orders.

(10) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(11) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.

(13) "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(14) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(15) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

§ 40-5-104. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (Enact.L. 1969, § 3, ch. 237; R.C.M. 1947, 93-2601-43.)

§ 40-5-105. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 40-5-108, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (Enact.L. 1969, § 4, ch. 237; R.C.M. 1947, 93-2601-44.)

§ 40-5-106. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding State at that time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (Enact.L. 1969, § 5, ch. 237; R.C.M. 1947, 93-2601-45.)

Cases

Extradition for criminal nonsupport.

Although a child support order issued by another State is a civil and not a criminal action, failure to pay the support may be a crime (felony criminal nonsupport) in that State, and the defendant is subject to extradition for criminal proceedings. Crabtree v. St., 607 P.2d 566 (Mont., 1980).

Modification of support decree.

When Montana and Idaho courts made child support awards without mention of original Nevada award under the Uniform Reciprocal Enforcement of Support Act, the

initial decree remained valid and unmodified and was entitled to full faith and credit by the courts of Montana. Campbell v. Jenne, 563 P.2d 574 (Mont., 1977).

§ 40-5-107. Conditions of Interstate Rendition.

(1) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (Enact.L. 1969, § 6, ch. 237; R.C.M. 1947, 93-2601-46.)

§ 40-5-108. Choice of Law.

Duties of support applicable under this part are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Enact.L. 1969, § 7, ch. 237; R.C.M. 1947, 93-2601-47.)

§ 40-5-109. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (Enact.L. 1969, § 8, ch. 237; R.C.M. 1947, 93-2601-48.)

Cases

Inaction by State as voluntary waiver.

Where wife initiated proceedings under Uniform Reciprocal Enforcement of Support Act (URESA) and claim was settled by agreement with former husband, it was error to allow State to recover claim, as this section only gives State right to initiate or join in

URESA proceedings initiated by individual obligee but not an action against individual obligee over sums recovered. Since State did not choose to initiate or join in proceedings, it voluntarily waived rights granted under this section. St. v. Hultgren, 541 P.2d 1211 (Mont., 1975).

§ 40-5-110. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (Enact.L. 1969, § 9, ch. 237; R.C.M. 1947, 93-2601-49.)

Cases

Earnings exempt from execution on unpaid alimony judgment.

§ 25-13-614, exempting earnings of a judgment debtor from execution, does not differentiate between different types of judgments, plainly provides an exemption of earnings against execution regardless of the nature of the underlying claim, and the supreme court cannot insert an exception for delinquent alimony payment judgments. Earnings are exempt from execution on a judgment for unpaid alimony, and though an alimony claim is not strictly a debt, when reduced to judgment it becomes merged in the judgment, loses its underlying character, and the judgment creates a debt the same as any other money judgment. White v. White, 636 P.2d 844 (Mont., 1981) (case of first impression).

§ 40-5-111. Jurisdiction.

Jurisdiction of any proceeding under this part is vested in the District Court.

§ 40-5-112. Contents and Filing of Petition for Support; Venue.

(1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by § 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the Department of Social and Rehabilitation Services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any State in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for separation, annulment, dissolution, habeas

corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (Enact.L. 1969, § 11, ch. 237; am.L. 1977, § 6, ch. 379; R.C.M. 1947, 93-2601-51, am.L. 1979, § 3, ch. 33.)

§ 40-5-113. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney, upon the request of the court, the Department of Social and Rehabilitation Services, the Department of Revenue, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (Enact.L. 1969, § 12, ch. 237; R.C.M. 1947, 93-2601-52; am.L. 1981, § 1, ch. 189.)

§ 40-5-114. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (Enact.L. 1969, § 13, ch. 237; R.C.M. 1947, 93-2601-53.)

§ 40-5-115. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (Enact.L. 1969, § 14, ch. 237; R.C.M. 1947, 93-2601-54.)

§ 40-5-116. Cost and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or

other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (Enact.L. 1969, § 15, ch. 237; R.C.M. 1947, 93-2601-55.)

§ 40-5-117. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (Enact.L. 1969, § 16, ch. 237; R.C.M. 1947, 93-2601-56.)

§ 40-5-118. State Information Agency.

(1) The State Department of Social and Rehabilitation Services is designated as the State Information Agency under this part.

(2) It shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this part and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a Statement of their effective date to all other State Information Agencies.

(b) Maintain a register of list of courts received from other State and transmit copies thereof promptly to every court in this State having jurisdiction under this part; and

(c) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other States.

(3) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicles license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the Uniform Reciprocal Enforcement of Support Act of the initiating State with the clerk

of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the Attorney General who may undertake the representation.

HISTORY: (Enact.L. 1969, § 17, ch. 237; am.L. 1974, § 48, ch. 121; R.C.M. 1947, 93-2601-57.)

§ 40-5-119. Duty of the Court and Officials of this State as Responding State.

(1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (Enact.L. 1969, § 18, ch. 237; R.C.M. 1947, 93-2601-58.)

§ 40-5-120. Further Duties of Court and Officials in the Responding State.

(1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, an if because of the inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (Enact.L. 1969, § 19, ch. 237; R.C.M. 1947, 93-2601-59.)

§ 40-5-121. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (Enact.L. 1969, § 20, ch. 237; am.L. 1977, § 24, ch. 33; R.C.M. 1947, 93-2601-60.)

§ 40-5-122. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (Enact.L. 1969, § 21, ch. 237; R.C.M. 1947, 93-2601-61.)

§ 40-5-123. Husband and Wife Communications Not Privileged.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (Enact.L. 1969, § 22, ch. 237; R.C.M. 1947, 93-2601-62.)

§ 40-5-124. Rules of Evidence; Application.

In any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (§ 40-5-128) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (Enact.L. 1969, § 23, ch. 237; R.C.M. 1947, 93-2601-63.)

Cases

Scope of responding court's authority; undetermined.

Because it was necessary in this action, the Supreme Court refused to decide whether to follow the majority rule that a URESA responding court may make an independent review of the duty and amount of support due from an alleged obligor, or to follow the

minority rule that the responding court is limited to examining the foreign court's order to see if it, on its face, states that the alleged obligor has a duty to support. State of Oregon ex rel., Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Evidence of emancipation of minor child.

When evidence in a URESA action indicated that the minor child lived away from the obligee but was not earning enought money to support herself, the District court's determination that the minor child was not emancipated was not clearly erroneous. State of Oregon ex rel. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Obligation to support independent of visitation rights.

A child's right to support and the parent's support obligation are not affected by misconduct of the parent or violations of visitation provisions of a custody decree. The District Court therefore was in error in making the enforcement of the child support payments, under a Uniform Reciprocal Enforcement of Support Act (URESA) action, contingent upon visitation compliance by the custodial parent. State ex rel. Dewyea v. Knapp, 674 P.2d 1104 (Mont., 1984).

§ 40-5-125. Order of Support.

If the responding court finds a duty of support, it may order the obligor to finish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (Enact.L. 1969, § 23, ch. 237; R.C.M. 1947, 93-2601-64.)

Cases

Scope of responding court's authority.

Because it was unnecessary in this action, the supreme court refused to decide whether to follow the majority rule that a URESA responding court may make an independent review of the duty and amount of support due from an alleged obligor, or to follow the minority rule that the responding court is limited to examining the foreign court's order to see if it, on its face, states that the alleged obligor has a duty to support. State of Oregon ex re. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Evidence of emancipation of minor child.

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determination that the minor child was not emancipated was not clearly erroneous. State of Oregon ex rel. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Payments made directly to children.

The obligation to pay child support is not discharged by payment to the children themselves when the support order directs that payment be made to the children's mother. State of Oregon ex rel. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

District Court adjudicating URESA action.

Even though the URESA responding court and the court that issued the original child support order are the same, a request for modification of the divorce decree is separate from a URESA action. State of Oregon ex rel. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Superseding order.

Nevada child support award was not modified by child support order of Idaho court entered at time the Uniform Reciprocal Enforcement of Support Act in effect in Idaho specifically provided that no order of support issued by court of that State, when acting as responding State, should supersede any other order of support. Campbell v. Jenne, 563 P.2d 574 (Mont., 1977).

Subsequent order.

Nevada child support award was not modified by child support order of Montana court. The Uniform Reciprocal Enforcement of Support Act provided that support order entered by Montana court did not nullify support order made by court of any other State, unless specifically provided for. In absence of Montana support order referring to Nevada support award, the Nevada award was not modified. Campbell v. Jenne, 563 P.2d 574 (Mont., 1977).

Order to refer to prior orders.

Uniform Reciprocal Enforcement of Support Act court orders that do not refer to prior support awards do not modify them. Campbell v. Jenne, 563 P.2d 574 (Mont., 1977).

§ 40-5-126. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (Enact.L. 1969, § 25, ch. 237; R.C.M. 1947, 93-2601-65.)

§ 40-5-127. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (Enact.L. 1969, § 26, ch. 237; R.C.M. 1947, 93-2601-66.)

§ 40-5-128. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (Enact.L. 1969, § 27, ch. 237; R.C.M. 1947, 93-2601-67.)

Cases

District Court adjudicating URESA action.

Even though the URESA responding court and the court that issued the original child support order are the same, a request for modification of the divorce decree is separate from a URESA action. State of Oregon ex rel. Worden v. Drinkwalter,---M---, 700 P.2d 150, 42 St. Rep. 599 (1985).

Rebuttal of paternity presumption.

The issue of paternity in a Uniform Reciprocal Enforcement of Support Act (URESA) action must be determined according to the provisions of the Uniform Parentage Act. Failure to rebut the presumption that petitioner's husband was the natural father of the child within 5 years of the child's birth bars a paternity action against a nonpresumed person. Borchers v. McCarter, 592 P.2d 941 (Mont., 1979).

Paternity determination as final judgment.

A jury verdict determining paternity is an appealable final judgment and, in effect, an action separate from a support determination. Borchers v. McCarter, 592 P.2d 941 (Mont., 1979).

§ 40-5-129. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (Enact.L. 1969, § 28, ch. 237; R.C.M. 1947, 93-2602-68.)

§ 40-5-130. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (Enact.L. 1969, § 29, ch. 237; R.C.M. 1947, 93-2601-69.)

§ 40-5-131. Proceedings Not To Be Stayed; When.

A responding court may not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must confirm its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (Enact.L. 1969, § 30, ch. 237; R.C.M. 1947, 93-2601-70; am.L. 1979, § 4, ch. 33.)

§ 40-5-132. Application of Payments.

A support order made by a court of this State pursuant to this part does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (Enact.L. 1969, § 31, ch. 237; R.C.M. 1947, 93-2601-71.)

§ 40-5-133. Effect of Participation in Proceeding.

Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (Enact.L. 1969, § 32, ch. 237; R.C.M. 1947, 93-2601-72.)

§ 40-5-134. Intrastate Application.

This part applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (Enact.L. 1969, § 33, ch. 237; R.C.M. 1947, 93-2601-73.)

Cases

A child's right to support and the parent's support obligation are not affected by misconduct of the parent or violations of visitation provisions of a custody decree. The District Court therefore was in error in making the enforcement of the child support payments, under a Uniform Reciprocal Enforcement of Support Act (URESA) action, contingent upon visitation compliance by the custodial parent. State ex rel. Dewyea v. Knapp, 674 P.2d 1104 (Mont., 1984).

§ 40-5-135. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (Enact.L. 1969, § 34, ch. 237; R.C.M. 1947, 93-2601-74.)

§ 40-5-136. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (Enact.L. 1969, § 35, ch. 237; R.C.M. 1947, 93-2601-75.)

§ 40-5-137. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (Enact.L. 1969, § 36, ch. 237, R.C.M. 1947, 93-2601-76.)

§ 40-5-138. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (Enact.L. 1969, § 37, ch. 237; R.C.M. 1947, 93-2601-77.)

§ 40-5-139. Official To Represent Obligee.

(1) If this State is acting either as a rendering or a registering State, the prosecuting attorney, upon the request of the court, a State Department of Social and Rehabilitation Services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (Enact.L. 1969, § 38, ch. 237; am.L. 1974, § 48, ch. 121; R.C.M. 1947, 93-2601-78.)

§ 40-5-140. Registration Procedure; Notice.

(1) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(a) Three certified copies of the order with all modifications thereof,

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made; and

(c) A statement, verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (Enact.L. 1969, § 39, ch. 237; R.C.M. 1947, 93-2601-79.)

§ 40-5-141. Effect of Registration; Enforcement Procedure.

(1) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcmeent of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (Enact.L. 1969, § 40, ch. 237; R.C.M. 1947, 93-2601-80.)

§ 40-5-142. Uniformity of Interpretation.

This part shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (Enact.L. 1969, § 41, ch. 237; R.C.M. 1947, 93-2601-81.)

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Part I: General Provisions

§ 42-762. Purpose.

The purposes of §§ 42-762 to 42-7,104 are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (L. 1971, LB 464; § 1; eff. August 27, 1971.)

§ 42-763. Terms; Defined.

In §§ 42-762 to 42-7,104 unless the context otherwise requires:

(a) "COURT" means the District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY" of support means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by §§ 42-762 to 42-7,104.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" Includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT" order means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1971, LB 464, § 2, eff. August 27, 1971.)

§ 42-764. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1971, LB 464, § 3, eff. August 27, 1971.)

§ 42-765. Duties to Support.

Duties of support arising under the law of this State, when applicable under § 42-768, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (L. 1971, LB 464, § 4, eff. August 27, 1971.)

Part II: Criminal Enforcement

§ 42-766. Interstate Enforcement.

The Governor of this State may (1) demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or (2) surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with §§ 42-762 to 42-7,104 apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state nor show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1971, LB 464, § 5, eff. August 27, 1971.)

§ 42-767. Interstate Enforcement; Conditions.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under §§ 42-762 to 42-7,104 or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective, but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1971, LB 464, § 6, eff. August 27, 1971.)

Part III: Civil Enforcement

§ 42-768. Duties of Support; Enforcement; Presumptions.

Duties of support applicable under §§ 42-762 to 42-7,104 are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1971, LB 464, § 7, eff. August 27, 1971.)

§ 42-769. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it shall have the same right to initiate a proceeding under §§ 42-762 to 42-7,104 as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1971, LB 464, § 8, eff. August 27, 1971.)

§ 42-770. Duties of Support; How Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under §§ 42-762 to 42-7,104 including a proceeding for civil contempt.

The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (L. 1971, LB 464, § 9, eff. August 27, 1971.)

§ 42-771. Enforcement; Jurisdiction of Court.

Jurisdiction of any proceeding under §§ 42-762 to 42-7,104 is vested in the District Court.

HISTORY: (L. 1971, LB 464, § 10, eff. August 27, 1971.)

§ 42-772. Petition for Support; Contents; Venue.

(a) The petition shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1971, LB 464, § 11, eff. August 27, 1971.)

§ 42-773. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney upon the request of the court shall represent the obligee in any proceeding under §§ 42-762 to 42-7,104. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1971, LB 464, § 12, eff. August 27, 1971.)

§ 42-774. Enforcement; Petition for Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1971, LB 464, § 13, eff. August 27, 1971.)

§ 42-775. Enforcement; Initiating State; Court; Duties.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support, and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of §§ 42-762 to 42-7,104 to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown, and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1971, LB 464, § 14, eff. August 27, 1971.)

§ 42-776. Enforcement; Costs; Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee, but it may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. The costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1971, LB 464, § 15, eff. August 27, 1971.)

§ 42-777. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may (1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or (2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon, it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1971, LB 464, § 16, eff. August 27, 1971.)

§ 42-778. Enforcement; State Information Agency; Duties.

(a) The Director of Public Welfare is designated as the State Information Agency under §§ 42-762 to 42-7,104. He shall (1) compile a list of the courts and their addresses in this State having jurisdiction under §§ 42-762 to 42-7,104 and transmit it to the State Information Agency of every other State which has adopted §§ 42-762 to 42-7,104 or a substantially similar act; and, upon the adjournment of each session of the Legislature, he shall distribute copies of any amendments to §§ 42-762 to 42-7,104 and a statement of their effective date to all other State Information Agencies; (2) maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under §§ 42-762 to 42-7,104; and (3)

forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act he receives from courts or information agencies of other States.

(b) If the Director of Public Welfare does not know the location of the obligor or his property in the State, and no State location service is available, he shall use all means at his disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, records of motor vehicle license offices, and by making requests to the tax offices both State and Federal where such offices are able to cooperate, to the Social Security Administration as permitted by the Social Security Act as amended, and to employers who may be able and willing to furnish such information.

(c) After the deposit of three copies of the petition, certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the Attorney General who may undertake the representation.

HISTORY: (L. 1971, LB 464, § 17, eff. August 27, 1971.)

§ 42-779. Enforcement; Responding State; Clerk of District Court; County Attorney; Duties.

(a) After the responding court receives copies of the petition, certificate and act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1971, LB 464, § 18, eff. August 27, 1971.)

§ 42-780. Enforcement; Responding State; County Attorney; Tracing of Defendant; Duties

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if, because of inaccuracies in the petition, or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating State to a court in

the other county or to a county in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by §§ 42-762 to 42-7,104 shall apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (L. 1971, LB 464, § 19, eff. August 27, 1971.)

§ 42-781. Enforcement; Responding State; Hearing; Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1971, LB 464, § 20, eff. August 27, 1971.)

§ 42-782. Obligor; Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in his testimony.

HISTORY: (L. 1971, LB 464, § 21, eff. August 27, 1971.)

§ 42-783. Husband and Wife; Witnesses; Competent To Testify.

Laws attaching a privilege against the disclosure of communications between husband and wife shall be inapplicable to proceedings under §§ 42-762 to 42-7,104. Husband and wife shall be competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1971, LB 464, § 22, eff. August 27, 1971.)

§ 42-784. Rules of Evidence.

In any hearing for the civil enforcement of §§ 42-762 to 42-7,104, the court shall be governed by the rules of evidence applicable in a civil action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity as set forth in § 42-788, or to a defendant in an action, or a proceeding to enforce a foreign money judgment. The determination

or enforcement of a duty of support owed to one obligee shall be unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1971, LB 464, § 23, eff. August 27, 1971.)

§ 42-785. Enforcement; Responding State; Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to §§ 42-762 to 42-7,104 shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property shall have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1971, LB 464, § 24, eff. August 27, 1971.)

§ 42-786. Enforcement; Responding State; Transmit Copies of Orders to Initiating State.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (L. 1971, LB 464, § 25, eff. August 27, 1971.)

§ 42-787. Enforcement; Responding State; Court; Additional Powers.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to (1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due; (2) require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and (3) punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (L. 1971, LB 464, § 26, eff. August 27, 1971.)

§ 42-788. Paternity; Court; Adjudicate.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate

the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1971, LB 464, § 27, eff. August 27, 1971.)

Cases

When it is necessary to establish paternity under this section, the alleged father is entitled to a jury trial on that issue at his request. Wahlers v. Frye, 205 Neb. 399, 288 N.W.2d 29.

§ 42-789. Enforcement; Responding State; Court; Duties.

A responding court shall have the following duties which may be carried out by the clerk of the court: (1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and (2) to furnish to the initiating court upon request, a certified statement of all payments made by the obligor.

HISTORY: (L. 1971, LB 464, § 28, eff. August 27, 1971.)

§ 42-790. Initiating Court; Funds; Receipt; Disburse.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. Such payment may be carried out by the clerk of the court.

HISTORY: (L. 1971, LB 464, § 29, eff. August 27, 1971.)

§ 42-791. Enforcement; Stay of Proceedings; None.

A responding court shall not stay the proceeding or refuse a hearing under §§ 42-762 to 42-7,104 because of any pending or prior action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof, it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demand in the petition being heard, the court shall conform its support order to the amount allowed in the other action. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action.

HISTORY: (L. 1971, LB 464, § 30, eff. August 27, 1971.)

§ 42-792. Enforcement; Application of Payments.

A support order made by a court of this State pursuant to §§ 42-762 to 42-7,104 shall not nullify and shall not be nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period

pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1971, LB 464, § 31, eff. August 27, 1971.)

§ 42-793. Effect of Participation in Proceedings.

Participation in any proceeding under §§ 42-762 to 42-7,104 shall not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (L. 1971, LB 464, § 32, eff. August 27, 1971.)

§ 42-794. Enforcement; Intrastate Application.

§§ 42-762 to 42-7,104 shall apply if both the obligee and the obligor are in this State but in different counties. If the the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support, and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (L. 1971, LB 464, § 33, eff. August 27, 1971.)

§ 42-795. Enforcement; Appeal.

If the Director of Public Welfare decides that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may (1) perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or (2) if the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1971, LB 464, § 34, eff. August 27, 1971.)

Part IV: Registration of Foreign Support Orders

§ 42-796. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (L. 1971, LB 464, § 35; L. 1971, LB 1021, § 1, eff. August 27, 1971.)

§ 42-797. Registry.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (L. 1971, LB 1021, § 36, eff. August 27, 1971.)

§ 42-798. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1971, LB 464, § 36; L. 1971, LB 1021, § 2, eff. August 27, 1971.)

§ 42-799. Official to Represent Obligee.

If this State is acting either as a rendering or a registering State, the prosecuting attorney upon the request of the court shall represent the obligee in proceedings under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1971, LB 464, § 37; L. 1971, LB 1021, § 3, eff. August 27, 1971.)

§ 42-7,100. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the Uniform Reciprocal Enforcement of Support Act of the State in which the order was made, and (3) a statement signed by the obligee, showing the post office address of the obligee, the last-known place of residence and post office address of the obligor, the amount of support remaining unpaid, description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under §§ 42-762 to 42-7,104.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1971, LB 464, § 38; L. 1971, LB 1021, § 4, eff. August 27, 1971.)

§ 42-7,101. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It shall have the same

effect and shall be subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) Within twenty days after the mailing of notice of the registration the obligor may petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order shall be confirmed.

(c) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending, or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1971, LB 464, § 39; L. 1971, LB 1021, § 5, eff. August 27, 1971.)

§ 42-7,102. Uniformity of Interpretation.

§§ 42-762 to 42-7,104 shall be construed so as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1971, LB 464, § 40; L. 1971, LB 1021, § 6, eff. August 27, 1971.)

§ 42-7,103. Act, How Cited.

§§ 42-762 to 42-7,104 may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (L. 1971, LB 464, § 41; L. 1971, LB 1021, § 7, eff. August 27, 1971.)

§ 42-7,104. Act, How Construed.

If any provision of §§ 42-762 to 42-7,104 or the application thereof to any person or circumstances shall be held invalid, the invalidity does not affect other provisions or applications of §§ 42-762 to 42-7,104 which can be given effect without the invalid provision or application, and to this end the provisions of §§ 42-762 to 42-7,104 are severable.

HISTORY: (L. 1971, LB 464, § 42; L. 1971, LB 1021, § 8, eff. August 27, 1971.)

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NEVADA

NEV. REV. STAT. §§ 130.010 to 130.370

General Provisions

§ 130.010. Short Title.

This chapter may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

HISTORY: (1:44:1955; added to N.R.S. by 1969, 600.)

§ 130.020. Uniformity of Interpretation.

This chapter shall be so interpreted and contrued as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (2:44:1955.)

§ 130.030. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (3:44:1955; added to N.R.S. by 1969, 600.)

§ 130.040. Definitions.

As used in this chapter, unless the context requires otherwise, the words and terms defined in Nev.Rev.Stat. 130.041 to 130.0433, inclusive, have the meanings ascribed to them in Nev.Rev.Stat. 130.041 to 130.0433, inclusive.

HISTORY: (4:44:1955; added to N.R.S. by 1969, 600.)

§ 130.0410. "COURT" Defined.

"COURT" means the District Court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

HISTORY: (Added to N.R.S. by 1969, 607.)

§ 130.0411. "DUTY OF SUPPORT" Defined.

"DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final or whether

incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

HISTORY: (Added to N.R.S. by 1969, 607.)

§ 130.0412 "GOVERNOR" Defined.

"GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0413. "INITIATING COURT" Defined.

"INITIATING COURT" means the court in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0414. "INITIATING STATE" Defined.

"INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0415. "LAW" Defined.

"LAW" includes both common and statutory law.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0420. "OBLIGEE" Defined.

"OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0421. "OBLIGOR" Defined.

"OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0422. "PROSECUTING ATTORNEY" Defined.

"PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0423. "REGISTER" Defined.

"REGISTER" means to file in the Registry of Foreign Support Orders.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0424 "REGISTERING COURT" Defined.

"REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0425. "RENDERING STATE" Defined.

"RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0430. "RESPONDING COURT" Defined.

"RESPONDING COURT" means the court in which the responsive proceeding is commenced.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0431. "RESPONDING STATE" Defined.

"RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0432. "STATE" Defined.

"STATE" includes a State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0433. "SUPPORT ORDER" Defined.

"SUPPORT ORDER" means any judgment, decree or order of support in favor of an obligee, whether temporary or final or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.0434. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: (30:44:1955; added to N.R.S. by 1969, 607; substituted in revision for N.R.S. 130.300.)

§ 130.050. Remedies Additional to Those Now Existing.

The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

HISTORY: (5:44:1955.)

Cases

Where California court doubled amount of child support father had been ordered to pay monthly pursuant to Nevada divorce decree and father ceased paying but mother brought action under Uniform Reciprocal Enforcement of Support Act which culminated in stipulated order whereby father paid, and mother accepted, one-half the monthly amount awarded by California court, father could not successfully defend against enforcement of California judgment by contending that mother's stipulation and acceptance of lesser amount in URSEA action constituted waiver or modification of her right to accrued support under order of California court. Under provisions of Nev.Rev.Stat. 130.050 and 130.280, support order under URESA could not supersede or nullify any previous order of support in absence of specific provision to that effect. Foster v. Marshman, 611 P.2d 197 (Nev., 1980).

§ 130.060. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under Nev.Rev.Stat. 130.090, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (6:44:1955.)

Criminal Enforcement

§ 130.070. Interstate Rendition.

1. The Governor of this State may:

(a) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; and

(b) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person.

2. The provisions for extradition of criminals not inconsistent with this chapter apply to the demand, even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding State.

HISTORY: (7:44:1955; added to N.R.S. by 1969, 600.)

§ 130.080. Conditions of Interstate Rendition.

1. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

2. If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

3. If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (8:44:1955; added to N.R.S. by 1969, 601.)

Civil Enforcement

§ 130.090. Choice of Law.

Duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present during the period for which support is sought.

The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (9:44:1955; added to N.R.S. by 1957, 9; 1969, 601.)

§ 130.100. Remedies of State or Political Subdivision Furnishing Support.

Whenever the State, or a political subdivision thereof, furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished or of obtaining continuing support, or both.

HISTORY: (10:44:1955; added to N.R.S. by 1969, 601; 1981, 775.)

§ 130.110. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (11:44:1955; added to N.R.S. by 1969, 601.)

§ 130.115. Jurisdiction of District Court; Appointment, Powers of Master.

1. Jurisdiction of any proceeding under this chapter is vested in the District Court.

2. The District Court may appoint any person qualified by education, experience and training as a master to hear cases brought under this chapter. The master has the powers granted to special masters under Rule 53 of the Nevada Rules of Civil Procedure or local District Court rules.

HISTORY: (Added to N.R.S. by 1969, 608; by 1981, 775.)

§ 130.120 Contents and Filing of Complaint for Support; Venue.

1. The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks of this person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

2. The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept or forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution,

habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (12:44:1955; added to N.R.S. by 1969, 602.)

§ 130.130. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney, upon the request of the court, shall represent the obligee in any proper proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (13:44:1955; added to N.R.S. by 1969, 602.)

§ 130.140. Petition for a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (14:44:1955.)

§ 130.150. Duty of Initiating Court.

1. If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and shall cause three copies of the complaint and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court are unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court, and that the court of the responding State acknowledge their receipt to the initiating court.

2. If the responding State is a province or territory of the Dominion of Canada, the judge of the initiating court shall set forth in his certificate the weekly or monthly amount of United States currency which, in his opinion, the obligor should be required to pay for the support of the obligee. The amount of currency so recommended is only provisional and may be confirmed or modified by the court of the responding State.

HISTORY: (15:44:1955; added to N.R.S. by 1969, 602; 1975, 244.)

§ 130.160. Costs and Fees.

1. When the District Attorney is requested to initiate an action in accordance with this chapter, he may assess against the obligee a fee of not more than $20 for an application. He may request that the responding court collect the fee from the obligor.

A fee may not be assessed against the State of Nevada when acting as a party to an action brought pursuant to this chapter.

2. When the District Attorney is requested to respond in an action in accordance with this chapter, the court may assess against an obligor, in addition to any support obligation ordered, a reasonable fee for collection and distribution. If the court finds that the obligor would experience a financial hardship if required to pay the fee immediately, it may order that the fee be paid in installments, each of which is not more than 25 percent of the support obligation for each month.

3. All fees collected pursuant to this section must be deposited in the general fund of the county and an equivalent amount must be allocated to augment the county's program for the enforcement of support obligations.

4. A responding court shall not require the posting of any bond, written undertaking, or security by the obligee, including bonds for the seizure or attachment of property or require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and such fees and costs as are incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (16:44:1955; added to N.R.S. by 1969, 603; 1981, 1576.)

§ 130.170. Jurisdiction by Arrest.

1. If the court of this State believes that the obligor may flee, it may:

(a) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(b) As a responding court, obtain the body of the obligor by appropriate process.

2. Thereafter, the court may release the obligor upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (17:44:1955; added to N.R.S. by 1969, 603.)

§ 130.180. State Information Agency.

1. The Attorney General is hereby designated as the State Information Agency under this chapter, and he shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law.

(b) Upon the adjournment of each session of the legislature, distribute copies of any amendments to this chapter and a statement of their effective date to all other State Information Agencies.

(c) Maintain a register of lists of courts received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

(d) Forward to the court in this State which has jurisdiction over the obligor or his property, complaints, certificates and copies of the law which he receives from courts or information agencies of other States.

2. If the Attorney General does not know the location of the obligor or his property in the State and no State location service is available he shall use all means at his disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

3. After the deposit of three copies of the complaint and certificate and one copy of the law of the initiating State with the clerk of the appropriate court, if the Attorney General knows or believes that the prosecuting attorney is not prosecuting the case diligently, the Attorney General may undertake the representation.

HISTORY: (18:44:1955; added to N.R.S. by 1969, 603.)

§ 130.190. Duty of the Court and Officials of this State as Responding State.

1. After the responding court receives copies of the complaint, certificate and law from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

2. The prosecuting attorney shall prosecute all proper cases upon the request of the court and shall prosecute those cases diligently and within a reasonable time. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and may initiate the proceedings under this chapter by civil summons or at any time request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

3. The prosecuting attorney may, as necessary, utilize all the remedies available to a litigant in a civil proceeding, including attachment, execution and sequestration.

4. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (19:44:1955; added to N.R.S. by 1969, 604; 1981, 775.)

§ 130.200. Further Duties of Court and Officials in the Responding State.

1. The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if, because of inaccuracies in the complaint or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

2. If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

3. If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (20:44:1955; added to N.R.S. by 1961, 70; 1969, 604.)

§ 130.205. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or interrogatories or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken or interrogatories propounded.

HISTORY: (Added to N.R.S. by 1969, 608.)

§ 130.207 Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (Added to N.R.S. by 1969, 609.)

§ 130.209. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are

competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (27:44:1955; substituted in revision for N.R.S. 130.270.)

§ 130.210. Rules of Evidence.

1. The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed. Strict rules of evidence need not be observed, but those prescribed in Nev.Rev.Stat. 233B.123 apply. In any action brought pursuant to this chapter, the affidavit of the obligee is admissible into evidence subject to challenges using the procedure prescribed in Nev.Rev.Stat. 130.205. If the action is based on a support order issued by another court, a certified copy of the order must be received as evidence of the duty of support and any arrearages which have accrued thereunder, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment.

2. Once an order of support is entered by the court in a proceeding under this chapter, it has the same effect and is subject to the same procedures, defenses and proceedings for reopening, modifying, vacating or staying as any support order of this State and may be enforced and satisfied in a like manner.

3. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (21:44:1955, added to N.R.S. by 1969, 605, 1981, 776.)

§ 130.220. Order of Support.

1. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to such order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding State or other appropriate agency or office.

2. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (22:44:1955; added to N.R.S. by 1969, 605.)

§ 130.230. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (23:44:1955; added to N.R.S. by 1969, 606.)

§ 130.240. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular:

1. Require the obligor to furnish a cash deposit or bond of a character and amount to assure payment of any amount due.

2. Require the obligor to report personally and to make payments at specified intervals to the clerk of the court.

3. Punish, under the power of contempt, the obligor who violates any order of the court.

4. Enter judgment for arrearages which have accrued, and to direct that the obligor retire such arrearages in addition to his regular support payments.

HISTORY: (24:44:1955; added to N.R.S. by 1969, 606.)

§ 130.245. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue as provided in ch. 126 of Nev.Rev.Stat. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (Added to N.R.S. by 1969, 609; by 1979, 1284.)

§ 130.250. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

1. To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise.

2. To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (25:44:1955; added to N.R.S. by 1969, 606.)

§ 130.260. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court or other appropriate agency or office.

HISTORY: (26:44:1955; added to N.R.S. by 1969, 607.)

§ 130.265. Proceedings Not To Be Stayed.

1. A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding.

2. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard under this chapter, the court must conform it support order to the amount allowed in the other action or proceeding unless the court is of the opinion for good cause shown that another amount would be proper. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (Added to N.R.S. by 1969, 609.)

§ 130.280. Application of Payments.

1. A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar law or any other law, regardless of priority of issuance.

2. Amounts paid for a particular period pursuant to any support order made by the court of another State must be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State pursuant to a proceeding under this chapter. Arrearages which have accrued prior to an order of a court of this State in a proceeding under this chapter must be computed in a like manner.

HISTORY: (28:44:1955; added to N.R.S. by 1969, 607; 1981, 776.)

Cases

An appeal of the order of the URESA court ordering appellant to pay his former wife $175.00 a month in child support payments. The divorce decree awarded custody of the child of the parties to appellant and made no order with respect to child support. In violation of the custody award the former wife, Lonnie Vix, took the child to Wisconsin and refused to return him to appellant, James Vix. Lonnie Vix received assistance from the State of Wisconsin for support of the child, and the State of Wisconsin filed a complaint against appellant, James Vix, for reimbursement and to set future support for

the child. The trial court determined that the State of Wisconsin was not entitiled to reimbursement, but entered an ongoing support order in favor of Lonnie Vix. James Vix appealed the order, contending that the trial court was without jurisidiction to enter the order. The supreme court agreed, saying that the trial court's URESA order purported to change appellant's financial obligation but had the effect, also, of changing the custodial status of the child. The court held that such changes in the divorce decree could be made only in proceedings to modify the divorce decree. The court held that since the proceeding before it was brought only in the context of a URESA action, the court exceeded its jurisdiction in granting the support award. Vix v. State ex rel. Vix, 686 P.2d 226 (Nev., 1984).

The District Court modified the support provisions of a Maryland divorce decree, based on a Nevada URESA order in which the URESA court ordered that ongoing support should continue until age 18 instead of to age 21 as provided in the Maryland decree. The Surpreme Court reversed and held that it was error to base the order modifying the Maryland decrree on the Nevada URESA order because the URESA order, under current laws, could not modify or supersede the provisions of the divorce decree and, under former law, did not supersede or modify such a decree unless the URESA court so specified, which was not done in the URESA action on which the decree modifying the divorce decree was based. The court further held that it was error to determine that the age of majority to be applied was the age of 18 without first determining whether the divorce decree was based on a property settlement agreement, because if it were, the age of majority under then-existing law or the age started in the divorce decree would be the age to which support continued. But if the support obligation was based wholly on an order of the divorce court without being based on a property settlement agreement, the current statutory age of majority would apply. Salins v. Gulick, 676 P.2d 801 (Nev., 1984).

Support order entered in 1963 under Uniform Reciprocal Enforcement of Support Act (Nev.Rev.Stat. ch. 130) did not modify child support provisions of prior divorce decree so as to preclude action for arrearages under divorce decree where support order did not purport to modify divorce decree and, at time support order was entered, Nev.Rev.Stat. 130.280 did not permit such modification. Peot v. Peot, 551 P.2d 242 (Nev., 1976), cited, Foster v. Marshman, 611 P.2d 197 (Nev., 1980).

Where California court in 1963 doubled amount of child support father had been ordered to pay monthly pursuant to Nevada divorce decree and father ceased paying but stipulated to judgment in 1967 action under Uniform Reciprocal Enforcement of Support Act (ch. 130 of Nev.Rev.Stat.) whereby he paid one-half the monthly amount awarded by California court, and mother filed action in 1976 to collect arrearages accrued under 1963 judgment, district judge erred in applying payments made after date of statute of limitations (1970) to amounts accrued before that date (i.e., to oldest debt first). Because father's compliance with URSEA order demonstrated a specific application of partial payments under provision of Nev.Rev.Stat. 130.280 (with amounts paid for particular period to be applied to amounts accruing for same period under 1963 California order), circumstances fit exception to rule that payments are applied to oldest debt first. Foster v. Marshman, 661 P.2d 197 (Nev., 1980).

Where California court doubled amount of child support father had been ordered to pay monthly pursuant to Nevada divorce decree and father ceased paying but mother brought action under Uniform Reciprocal Enforcement of Support Act which culminated

in stipulated order whereby father paid, and other accepted, one-half the monthly amount awarded by California court, father could not successfully defend against enforcement of California judgment by contending that Mother's stipulation and acceptance of lesser amount in URSEA action constituted waiver or modification of her right to accrued support under order of California court. Under provisions of Nev.Rev.Stat. 130.050 and 130.280, support order under URESA could not supersede or nullify any previous order of support in absence of specific provision to that effect. Id.

§ 130.290. Applicability of Chapter; Effect of Participation in Proceeding.

1. The provisions of this chapter apply only with respect to proceedings for the enforcement of duties of support and do not apply to the determination of any collateral issue such as visitation, custody, property settlements or other agreements which might be asserted to exclude a child's right to support.

2. Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (29:44:1955; added to N.R.S. by 1969, 607; 1981, 777.)

§ 130.305. Intrastate Application.

1. This chapter applies if both the obligee and the obligor are in this State but in different counties, or if both obligee and obligor reside in the same county. In such cases the proceedings may be initiated by the prosecuting attorney making application to the District Court to represent the obligee. The court may request the prosecuting attorney to represent the obligee as in other matters under this chapter, upon a showing of one of the following:

(a) Present financial hardship; or

(b) No substantial compliance with a support order or agreement for at least 6 months prior to application.

2. In cases where the obligee and the obligor are in the same State but in different counties, if the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found.

3. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

4. In cases where the obligee and obligor reside in the same county, the distinction of initiating and responding courts will be considered merged in one uniform civil action for support originating in the District Court of the county where both parties reside, and all otherwise relevant portions of this chapter shall apply to such a proceeding.

HISTORY: (Added to N.R.S. by 1969, 609.)

§ 130.310. Appeals.

1. If the Attorney General or the prosecuting attorney is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the supreme court, if the support order was issued by a court of this State; or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State.

2. The expenses of appeal may be paid on the Attorney General's order from funds appropriated for his office, or, where the appeal is taken by the prosecuting attorney, by the county involved.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.315. Designation of Foreign Nation as Initiating State.

1. When the Attorney General is satisfied that reciprocal provisions will be made by any foreign jurisdiction for the enforcement therein of support orders made within the State, the Attorney General may declare the foreign jurisdiction to be an initiating State for the purpose of this chapter. Any such declaration may be revoked by the Attorney General and may be reviewed by the court in an action brought pursuant to this chapter.

2. As used in this section, "foreign jurisdiction" means a foreign sovereign nation or a political subdivision thereof.

HISTORY: (Added to N.R.S. by 1973, 900; by 1975, 244.)

Registration of Foreign Support Orders

§ 130.320. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Nev.Rev.Stat. 130.330 to 130.370, inclusive.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.330. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purpose provided in Nev.Rev.Stat. 130.320 to 130.370, inclusive.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.340. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.350. Official To Represent Obligee.

1. If this State is acting either as a rendering or a registering State the prosecuting attorney, upon the request of the court, shall represent the obligee in proceedings under Nev.Rev.Stat. 130.320 to 130.370, inclusive.

2. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.360. Registration Procedure; Notice.

1. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made;

(c) A statement verified and signed by the obligee, showing: (1) the post office address of the obligee, (2) the last-known place of residence and post office address of the obligor, (3) The amount of support remaining unpaid, (4) a description and the location of any property of the obligor available upon execution, and (5) A list of the States in which the order is registered.

2. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

3. Promptly upon registration, the clerk of the court shall send, by certified or registered mail, to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (Added to N.R.S. by 1969, 610.)

§ 130.370. Effect of Registration; Enforcement Procedure.

1. Upon registration, the confirmed registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, modifying, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

2. The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

3. At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment concerning any arrearages which have accrued thereunder. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If the obligor shows to the court any ground upon which enforcement of a support order of this State may be stayed or modified, the court shall stay enforcement of the order, or modify it, for an appropriate period, if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (Added to N.R.S. by 1969, 611.)

NEW HAMPSHIRE
N.H. REV. STAT. §§ 546:1 to 546:41

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NEW HAMPSHIRE

N.H. REV. STAT. §§ 546:1 to 546:41

Part 1: General Provisions

§ 546:1. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (1953, § 191:1 par. 1; N.H.R.S. § 546:1; 1959, § 271:1, eff. Nov. 14, 1959.)

Cases

Because the purpose of this chapter is to expedite matters of support enforcement in cases where the obligor is a considerable distance away from the obligee, it is possible that the obligee's case can be proved by cross-examination of the obligor by the prosecuting attorney or admissions of the obligor. Kinney v. Kinney, 453 A.2d 1321 (N.H., 1982).

Neither State of Maine which brought action under this section nor minor child on whose behalf action was brought were bound by judgment in previous divorce action, to which neither were parties, in which husband obtained default judgment on petition alleging that no children had been born of marriage. State ex rel. Fabian v. Fabian, 363 A.2d 1007 (N.H., 1976).

§ 546:2. Definitions.

I. "COURT" means the superior court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

II. "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

III. "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

IV. "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

V. "LAW" includes both common and statutory law.

VI. "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

VII. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support is commenced.

VIII. "PROSECUTING ATTORNEY" means the county attorney in the several counties.

IX. "REGISTER" means to record in the Registry of Foreign Support Orders.

X. "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

XI. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

XII. "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

XIII. "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction which this or a substantially similar reciprocal law is in effect.

XIV. "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1953, § 191:1 par. 2; N.H.R.S. § 546:2; 1959, § 271:1; 1971, § 181:1., eff. Aug. 8, 1971; Amendments 1971; amended generally and alphabetized definitions.)

Cases

Cited in Haight v. Petit, 435 A.2d 1132 (N.H., 1981); Stavens v. Stavens, 455 A.2d 1065, (N.H., 1983).

§ 546:3. Remedies Additional to Those Now Existing.

The remedies provided in part 3 hereof are in addition to and not in substitution for any other remedies.

HISTORY: (1953, § 191:1 par. 3; N.H.R.S. § 546:3; 1959, § 271:1, eff. Nov. 14, 1959.)

Cases

In general.

The main thrust of the uniform act is to provide an effective and additional method of determining and collecting support for the family. Chandler v. Chandler (1969) 109 NH 477, 256 A.2d 157. The remedies under this chapter are in addition to and not in substitution for any other remedies. Bourdon v. Bourdon (1964) 105 NH 432, 201 A.2d 889.

§ 546:4. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 7, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (1953, § 191:1 par. 4; N.H.R.S. § 546:4; 1959, § 271:1, eff. Nov. 14, 1959.)

Cases

Jurisdiction.

Where former husband was never present in Massachusetts during the period for which support was sought, no obligation could arise under its laws, and he never became subject to its criminal laws. Hardy v. Betz (1963) 105 NH 169, 195 A.2d 582. The duty of a father to support his children continues and may be enforced though the mother is residing with the children in another jurisdiction. Bourdon v. Bourdon (1964) 105 NH 432, 201 A.2d 889.

Part 2: Criminal Enforcement

§ 546:5. Interstate Rendition.

The Governor of this State (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (1953, § 191:1 par. 5; N.H.R.S. § 546:5; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:6. Conditions of Interstate Rendition.

(a) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any county attorney of this State to satisfy him that at least sixty days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(b) When under this or a substantially similar act, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon any county attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If an action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (1953, § 191:1, par. 6, eff. Nov. 14, 1959.)

Part 3: Civil Enforcement

§ 546:7. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1953, § 191:1, par. 7; N.H.R.S. § 546:7; 1959, § 271:1, eff. Nov. 14, 1959.)

Cases

The obligation of support under this chapter is generally determined according to the law off the responding State. Ely v. DeRosier, 459 A.2d 280 (N.H., 1983).

Cited in Haight v. Petit, 435 A.2d 1132 (N.H., 1981).

§ 546:8. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (1953, § 191:1, par. 8; N.H.R.S. 546:8; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:9. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1953, § 191:1, par. 9; N.H.R.S. 546:9; 1957, § 53:1. 1959, § 271:1, 1971, § 181:2, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:10. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the superior court.

HISTORY: (1953, § 191:1, par. 9; N.H.R.S. 546:9; 1957, § 53:1; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:11. Contents and Filing of Petition for Support; Venue.

I. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

II. The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1953, § 191:1, par. 10; N.H.R.S. 546:10; 1959, § 271:1; 1971, § 181:3, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:12. Official to Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney upon the request of the court, Division of Welfare, a county commissioner, an overseer of public welfare or other local welfare officer shall represent the obligee in any proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

HISTORY: (1953, § 191:1, par. 11; N.H.R.S. § 546:11; 1959, § 271:1; 1971, § 181:4, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:13. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1953, § 191:1, par. 12; N.H.R.S. 546:12; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:14. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1953, § 191:1, par. 13; N.H.R.S. § 546:13; 1959, § 271:1; 1971, § 181:5, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:15. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor, or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1953, § 191:1, par. 14; N.H.R.S. § 546:14; 1959, § 271:1; 1971, § 181:6, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

I. As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process.

II. As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1953, § 191:1, par. 15; N.H.R.S. § 546:15; 1959, § 271:1; 1971, § 181:7, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:17. State Information Agency.

I. The Division of Welfare is designated as the State Information Agency under this chapter. It shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the general court the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other State information agencies.

(b) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in his State having jurisdiction under this chapter.

(c) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

II. If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

III. After the deposit of three copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the Attorney General.

HISTORY: (1953, § 191:1 par. 16; N.H.R.S. § 546:16; 1959, § 271:1; 1971, § 181:8, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:18. Duty of the Court and Officials of This State as Responding State.

I. After the court of this State acting as a responding State has received from the court of the initiating State the aforesaid copies, the clerk of the court shall docket the case and notify the county attorney of his action.

II. It shall be the duty of the county attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the defendant or his property and shall request the court to set a time and place for a hearing and give notice thereof to the defendant in accordance with law.

III. If the county attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (1953, § 191:1, par. 17; N.H.R.S. 546:17; 1959, § 271:1; 1971, § 181:9, par. 10, eff. Aug. 8 1971; Amendments 1971, par. II. Provided for giving notice; par. III. Added.)

Cases

Cited in Kinney v. Kinney, 453 A.2d 1321 (N.H., 1982).

§ 546:19. Further Duties of Court and Officials in the Responding State.

I. The county attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the county attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

II. If the defendant or his property is not found in the county and the county attorney discovers by any means that the defendant or his property may be found in another county of this State or in another State, he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the Information Agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon both the court of the other county and any court of this State receiving the documents and the county attorney have the same powers and duties under this chapter as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

III. If the county attorney has no information as to the whereabouts of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1953, § 191:1, par. 18; N.H.R.S. § 546:18; 1957, § 55:2; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:20. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1959, § 271:1; 1971, § 181:11, eff. Aug. 8, 1971; Amendments 1971; amended section generally.)

Cases

In a hearing to determine former husband's duty of support of minor children, where a review of the transcript indicated that the former husband admitted to a duty of support by acknowledging that the two children residing with his former wife in Idaho were his children and that he produced no evidence to support a defense to a claim of support, it was not mandatory that the trial court grant former husband's requested continuance. Kinney v. Kinney, 453 A.2d 1321 (N.H., 1982).

§ 546:21. Immunity From Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (1959, § 271:1; 1971, § 181:12, eff. Aug. 8, 1971; Amendments 1971; amended section generally.)

§ 546:22. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1953, § 191:1, par. 24; N.H.R.S. § 546:24; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:23. Rules of Evidence.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (N.H.Rev.Stat. 546:26a) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1953, § 191:1, par. 25; N.H.R.S. § 546:25; 1959, § 271:1; 1971, § 271:13, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:24. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order. Support orders made pursuant to this chapter shall require that payments be made to the probation department of the court of the responding State. The court and county attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the county attorney shall transmit a certified copy of the order to the county attorney of any county where it appears that procedures to enforce payment of the amount due would be effective. The county attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1953, § 191:1, par. 19; N.H.R.S. § 546:19; 1959, § 271:1; 1971, § 181:14, eff. Aug. 8, 1971; Amendments 1971, added provisions relating to payment to probation departments.)

§ 546:25. Responding State To Transmit Copies to Initiating State.

The court of this State acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (1953, § 191:1, par. 20; N.H.R.S. § 546:20; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:26. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

I. To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

II. To require the defendant to make payments at specified intervals to the probation department or the obligee and to report personally to such probation department at such times as may be deemed necessary.

III. To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (1953, § 191:1, par. 21; N.H.R.S. § 546:21; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:26-a. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1971, § 181:15, eff. Aug. 8, 1971.)

Cases

If the issue of paternity already has been determined against the obligor in another jurisdiction, such a judgment is deemed res judicata and generally will be afforded full faith and credit by the responding State. Ely v. DeRosier, 459 A.2d 280 (N.H., 1983).

§ 546:27. Additional Duties of the Court of This State When Acting as a Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the probation department:

I. Upon the receipt of a payment made by the defendant and pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State.

II. Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (1953, § 191:1, par. 22; N.H.R.S. § 546:22; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:28. Additional Duty of the Court of This State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the probation department to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (1953, § 191:1, par. 23; N.H.R.S. § 546:23; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:29. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1959, § 271:1; 1971, § 181:16, eff. Aug. 8, 1971; Amendments 1971; amended section generally.)

§ 546:30. Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1953, § 191:1, par. 26; N.H.R.S. § 546:26; 1959, § 271:1; 1971, § 181:17, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

Orders not nullified.

Decree reducing the weekly payments which father was required to make under a former suspended order for the support of his minor children, with no finding that the father was in arrears, and ordering payments to be made in the future, did not constitute an order that would supersede any other order of support. Bourdon v. Bourdon (1964) 105 NH 432, 201 A.2d 889.

§ 546:31. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (1953, § 191:1, par. 27; N.H.R.S. § 546:27; 1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:32. Intercounty Application.

This chapter is applicable when both the petitioner and the defendant are in this State but in different counties. If the court of the county in which this petition is filed finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that a court of another county in this State may obtain jurisdiction of the defendant or his property, the clerk of the court shall send three copies of the petition and a certification of the findings to the court of the county in which the defendant or his property is found. The clerk of the court of the county receiving these copies shall notify the county attorney of their receipt. The county attorney and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the State as a responding State.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:32-a. Appeals.

If the Director of Welfare is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

I. Perfect an appeal to the proper appellate court if the support order was issued by a court of this State.

II. If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (1971, § 181:18, eff. Aug. 8, 1971.)

Part 4: Registration of Foreign Support Orders

§ 546:33. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:34. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:35. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:36. Official to Represent Obligee.

If this State is acting either as a rendering or registering State, the county attorney upon the request of the court, the Division of Welfare, a county commissioner, an overseer of public welfare or other local welfare or other local welfare officer shall represent the obligee in proceedings under this part. If the county attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request or may undertake the representation.

HISTORY: (1959, § 271:1; 1971, § 181:19, eff. Aug. 8, 1971; Amendments 1971; amended section generally.)

§ 546:37. Registration Procedure; Notice.

I. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(a) Three certified copies of the order with all modifications thereof.

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made.

(c) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the

order is registered. Upon receipt of these documents, the clerk of the court, without payment of a filing fee or other cost to the obligee shall record them in the registry of foreign support orders. The recording constitutes registration under this chapter.

II. Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the county attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (1959, § 271:1; 1971, § 181:20, eff. Aug. 8, 1971; Amendments 1971; amended section generally.)

§ 546:38. Effect of Registration; Enforcement Procedure.

I. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

II. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

III. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnished the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1959, § 271:1; 1971, § 181:21, eff. Aug. 8, 1971; Amendments 1971, amended section generally.)

§ 546:39. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: (1953, § 191:1, par. 28; N.H.R.S. § 546:28; 1959, 271:1, eff. Nov. 14, 1959.)

§ 546:40. Uniformity of Interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

§ 546:41. Short Title.

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

HISTORY: (1959, § 271:1, eff. Nov. 14, 1959.)

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§ 2A: 4-30.24 Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties of support.

Cases

In general.

Uniform Reciprocal Enforcement of Support Act is a device to enforce support orders previously entered and does not independently create the obligation. Essex County Adjuster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

Construction and application.

Uniform Reciprocal Enforcement of Support Act is not the exclusive remedy by which a wife who is a resident of one State may seek increase in support payments from husband who is a resident of another State. Drobney v. Drobney, 146 N.J.Super. 317, 369 A.2d 963 (A.D. 1977).

Action by mother of illegitmate child in juvenile and domestic relations court for support against putative father was not a "bastardy proceeding" within meaning of statute providing that in bastardy proceedings mother of illegitimate child may be examined on oath in presence of reputed father even though mother demanded "order of filiation". M. v. F., 95 N.J.Super. 165, 230 A.2d 192 (Juv.&Dom.Rel. 1967).

California Department of Mental Hygiene could not, under Uniform Reciprocal Enforcement of Support Act, hold New Jersey resident for cost of maintaining his mentally ill son in California State Hospital, where no action could be maintained in California under statute or common law against any relative of son for cost of maintaining him. Department of Mental Hygiene, State of Cal. v. Judd, 45 N.J. 46, 211 A.2d 198 (1965).

Divorced husband could not attack separation agreement, incorporated into Alabama divorce decree, as void for violating public policy, where he had voluntarily submitted to jurisdiction of Alabama court in which wife instituted divorce action, and he failed to oppose inclusion of such agreement in decree or litigate issue whether support provision of agreement represented fair and equitable disposition of the problem. Hudson v. Hudson, 36 N.J. 549, 178 A.2d 202 (1962).

Every endeavor should be made by courts to render the Uniform Reciprocal Enforcement of Support Act operable for the objectives of the legislation are very worthy. Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956).

The duty of support enforceable under the Uniform Reciprocal Enforcement of Support Act is that imposed or imposable by law of New Jersey. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 589, 123 A.2d 3.

Jurisdiction.

The superior court exercises jurisdiction over local support actions brought by former wives against their former husbands, and the juvenile and domestic relations court exercises an identical, coextensive jurisdiction over interstate support suits brought under the Uniform Reciprocal Enforcement of Family Support Act by one former spouse against the other. Bing v. Bing, 86 N.J.Super. 246, 206 A.2d 606 (Juv.&Dom.Rel. 1965).

The juvenile and domestic relations court had exclusive jurisdiction to hear and decide wife's suit under Uniform Reciprocal Enforcement of Family Support Act against husband who had obtained a South Carolina judgment of divorce in his action based upon constructive service upon wife. Id.

Law governing.

The obligation, if any, of New Jersey divorced husband to support New York wife from whom he had procured a South Carolina judgment of divorce in his action based upon constructive service upon wife would be ascertained in her suit under Uniform Reciprocal Enforcement of Family Support Act by applying to the facts the pertinent rules of substantive New Jersey law. Bing v. Bing, 86 N.J.Super. 246, 206 A.2d 606 (Juv.&Dom.Rel. 1965).

§ 2A: 4-30.25. Short Title.

This Act shall be known and may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)."

HISTORY: (L. 1981, ch. 243, § 2.)

§ 2A: 4-30.26. Definitions.

a. "COURT" means the juvenile and domestic relations court of this State, and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

b. "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

c. "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

d. "LAW" includes both common and statutory law.

e. "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

f. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

g. "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

h. "REGISTER" means to record in the Registry of Foreign Support Orders.

i. "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

j. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

k. "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

l. "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

m. "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1981, ch. 243, § 3.)

Cases

Duty of support.

Wife suing for support under Uniform Support of Dependents Law of New York was entitled to notice of hearing before Bergen County juvenile and domestic relations court to take husband's testimony and to opportunity to cross-examine husband. Davis v. Davis, 103 N.J. Super. 284, 247 A.2d 139 (A.D. 1968).

The duty of support enforceable under the Uniform Reciprocal Enforcement of Support Act is that imposed or imposable by law of New Jersey. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510, (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

The jurisdiction of the juvenile and domestic relations court to order support of children, even in the direct proceedings, is concurrent with that of the superior court, and resort may properly be had to precedents established as a result of proceedings in superior court or its predecessor to determine extent of a father's duty to support his children. Id.

Where father is at all times willing to support children in New Jersey, but wife leaves State with children for purpose of obtaining a foreign divorce on grounds probably not adequate for New Jersey divorce, and of using Reciprocal Enforcement of Support Act to obtain support for children and to avoid necessity of appearing in New Jersey court, and there is no showing that welfare of children is being served by keeping them is foreign

State or that children are in need of support, wife should not be granted relief under the act. Id.

§ 2A: 4-30.27. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1981, ch. 243 § 4.)

Cases

Construction and application.

Where ex-wife had obtained judgment in Vermont for arrearages in support payments for child, fact that ex-wife did not proceed to enforce judgment in New Jersey under provisions of Uniform Reciprocal Enforcement of Support Act did not make procedure utilized by ex-wife of suing on Vermont judgment against public policy of New Jersey, Zelek v Brosseau, 47 N.J.Super. 521, 136 A.2d 416. (A.D. 1958) aff'd 26 N.J.Super. 501, 141 A.2d 17.

Remedies under the Uniform Reciprocal Enforcement of Support Act are in addition to and not in substitution for any other remedies. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

Where wife brought action for support under provisions of Uniform Reciprocal Enforcement of Support Act, which was tried before New York court, and New York court made no order requiring husband to support wife, wife's proceeding was of a civil nature and did not bar State from prosecution for criminal offense of nonsupport under Uniform Desertion and Nonsupport Act. State v. Greenberg, 16 N.J. 568, 109 A.2d 669 (1955).

Civil action in New York by wife under Uniform Reciprocal Enforcement of Support Act for support of herself and her child did not bar criminal prosecution of husband in New Jersey for deserting and wilfully neglecting to maintain his wife. State v. Greenberg, 30 N.J.Super. 592, 105 A.2d 683 (A.D. 1954) aff'd 16 N.J. 568, 109 A.2d 699.

§ 2A: 4-30.28. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 8, bind the obligor present in this State regardless of the presence of residence of the obligee.

HISTORY: (L. 1981, ch. 243, § 5, § 2A: 4-30.31.)

Cases

In general.

Under Uniform Reciprocal Enforcement of Support Act, duty of child support is determined by law of the State of the obligor's residence during period for which support is claimed. Essex County Adjuster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

Construction and application.

Father's duty to support minor children is continuing one, flowing directly from him to them, without regard to any marital dereliction of wife. Parivash v. Yousef, 89 N.J. Super, 133, 214 A.2d 314 (Ch. 1965) cause remanded 228 A.2d 698, 94 N.J.Super. 403.

Where complaint was filed by wife in Kentucky under the Uniform Reciprocal Support Act of Kentucky, as initiating State, and was certified and transferred to New Jersey under the Uniform Reciprocal Enforcement of Support Act of New Jersey, and husband was present at all times in New Jersey, it was the New Jersey law which was applicable on question of support for children. Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956).

The Uniform Reciprocal Enforcement of Support Act is not restricted to proceedings against an absconding husband or father who has filed State, and New Jersey court has jurisdiction where husband or father is present in State and children or wife are present in another State and father has duty to support under New Jersey law. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

Father's duty to support children exists, under New Jersey law, even where children reside outside of State, provided father is subject to jurisdiction of New Jersey courts. Id.

§ 2A: 4-30.29. Interstate Rendition.

The Governor of this State may:

a. Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

b. Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1981, ch. 243, § 6.)

§ 2A: 4-30.30. Conditions of Interstate Rendition.

a. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this Act or that any proceeding would be of no avail.

b. If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether

proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for reasonable time to permit the initiation of a proceeding.

c. If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1981, ch. 243, § 7.)

§ 2A: 4-30.31. Choice of Law.

Duties of support applicable under this Act are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1981, ch. 243, § 8.)

Cases

Construction and application.

In action by first wife against ex-husband for arrears in support of $150 per month which ex-husband had been order to pay when he obtained his divorce in Missouri, wherein the New Jersey court found that ex-husband had family by second marriage to support, and that payments the Missouri court imposed were higher than necessary, the New Jersey court would not enforce Missouri order of $150 per month for five months' time to allow him to endeavor to obtain modification of Missouri order before a Missouri court, during which time husband was required to pay only $130 per month. Coumans v. Albaugh, 36 N.J.Super. 308, 115 A.2d 641 (Juv.&Dom.Rel. 1955).

Where defendant was ordered to pay support and could not, in action for arrearages, contest validity of order of Missouri court, as that court had jurisdiction to enter order for support, and defendant's remedy was to obtain from Missouri court modification or revocation of support order. Id.

Where defendant was ordered to pay support for children when he obtained divorce in Missouri, if order was subject to modification or revocation of accrued support in Missouri, the order need not be enforced in New Jersey either under full faith and credit clause or as matter of comity. Id.

Under this Act, extent of duty of support is such as it would be under laws of New Jersey, but where there is valid order of support entered in another State, in absence of special circumstances, extent of duty of support in New Jersey will usually be that imposed by that order, and this rule is predicated on principles of comity and basic purpose of reciprocal legislation. Id.

Burden of proof.

The duties of support under the Uniform Reciprocal Enforcement of Support Act are those imposed or imposable under the laws of the State where the obligor was present

during the period for which support is sought, and the presumption places on him the burden of going forward with proof that he was not present in the responding State during such period. Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956).

Jurisdiction.

There was personal jurisdiction over defendant under Uniform Reciprocal Enforcement of Support Act where plaintiff filed complaint in Pennsylvania, her residence, complaint was certified and transmitted to New Jersey where husband was served with process, and husband subsequently moved to another State which was also a signatory to URESA. Sedelmeyer v. Sedelmeyer, 167 N.J.Super. 175, 400 A.2d 571 (Co. 1979).

Discretion of court.

Under Uniform Reciprocal Enforcement of Support Act, court could exercise its discretion and order support to be retroactive to date when complaint was filed in State. Sedelmeyer v. Sedelmeyer, 167 N.J.Super. 175, 400 A.2d 571 (Co. 1979).

§ 2A: 4-30.32. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1981, ch. 243, § 9.)

Cases

Construction and application.

Chancery division's order fixing father's child support arrearages at $2,000 superseded California welfare agency's rights, under Uniform Reciprocal Enforcement of Support Act, to seek reimbursement for payments made for children's support while they resided in California, and since father complied with order, there was no further enforceable duty to impose upon him. Essex County Adjuster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

Under the Uniform Reciprocal Enforcement of Support Act, the State or a political subdivision thereof has the right to initiate proceedings against any person owing a duty of support to a resident of the State, to whom support has been furnished by the State or a political subdivision, in order that the State or its political subdivision may secure reimbursement for expenditures made. Atty.Gen.F.O. 1956, No. 20.

§ 2A: 4-30.33. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (L. 1981, ch. 243, § 10.)

Construction and application.

Fact that real party in interest seeking to enforce a support order is a welfare agency which had furnished assistance does not enlarge express purpose of Uniform Reciprocal Enforcement of Support Act beyond enforcement of existing obligations. Essex County Adj ster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

Remedies under the Uniform Reciprocal Enforcement of Support Act are in addition to and not in substitution for any other remedies. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956), aff'd 21 N.J. 599, 123 A.2d 3.

Power and jurisdiction to make award for alimony or maintenance in proceedings brought after divorce, whether obtained in State or elsewhere, rests solely in superior court, and juvenile and domestic relations court had no jurisdiction to award amount for support of divorced wife and children under California divorce decree. Curley v. Curley, 1955, 34 N.J.Super. 257, 112 A.2d 20 (Ch. 2955).

Jurisdiction.

The superior court exercises jurisdiction over local support actions brought by former wives against their former husbands, and the juvenile and domestic relations court exercises an identical, coextensive jurisdiction over interstate support suits brought under the Uniform Reciprocal Enforcement of Family Support Act by one former spouse against the other. Bing v. Bing, 86 N.J.Super. 246, 206 A.2d 606 (Juv.&Dom.Rel. 1965).

The jurisdiction of the juvenile and domestic relations court to order support of children, even in the direct proceedings, is concurrent with that of the superior court, and resort may property be had to precedents established as a result of proceedings in superior court or its predecessor to determine extent of a father's duty to support his children. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

Jurisdiction of juvenile and domestic relations court of cases within Uniform Reciprocal Enforcement of Support Act is more comprehensive and goes beyond that conferred by §§ 2A.100-1 and 2A.100-2, governing direct proceedings for support, and is not circumscribed by statutory restrictions on jurisdictions in direct proceedings. Id.

In wife's action for support order for children instituted by filing complaint in county where wife and husband were residents and acts complained of occurred, the court had jurisdiction of the subject matter, including amendment of complaint to include wife's claim for support, notwithstanding the fact that both husband and wife were residents of another county at time process was served and during subsequent proceedings which culminated in an order for support of wife and children. Fiorino v. Fiorino, 35 N.J.Super. 463, 114 A.2d 480 (Juv.&Dom.Rel. 1955).

Statutes governing juvenile and domestic relations courts contain no county-wide territorial limitation on jurisdiction of court and court has jurisdiction over subject matter of support order for children and wife, regardless of residence of parties. Id.

§ 2A: 4-30.34. Jurisdiction.

Jurisdiction of any proceeding under this Act is vested in the juvenile and domestic relations court of any county of this State.

HISTORY: (L. 1981, ch. 243 § 11.)

§ 2A: 4-30.35. Contents and Filing of Complaint for Support; Venue.

a. The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

b. The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1981, ch. 243, § 12.)

§ 2A: 4-30.36. Officials To Represent Obligee.

If this State is acting as an initiating State the county adjuster upon the request of the court shall represent the obligee in any proceeding under this Act.

HISTORY: (L. 1981, ch. 243, § 13.)

§ 2A: 4-30.37. Complaint of a Minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1981, ch. 243, § 14.)

§ 2A: 4-30.38. Duty of Initiating Court.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the complaint and its certificate and one copy of this Act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court are unknown and the responding State has an information agency comparable to that established in the

initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1981, ch. 243, § 15.)

Cases

Construction and application.

Where complaint was filed by wife in Kentucky under the Uniform Reciprocal Support Act of Kentucky, as initiating State, and was certified and transferred to New Jersey under the Uniform Reciprocal Enforcement of Support Act of New Jersey, and husband was present at all times in New Jersey, it was the New Jersey law which was applicable on question of support for children. Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956).

The Uniform Reciprocal Enforcement of Support Act is not limited to cases where the obligor husband leaves the jurisdiction of the initiating State. Id.

§ 2A: 4-30.39. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

a. As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

b. As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1981, ch. 243, § 16.)

§ 2A: 4-30.40. State Information Agency.

a. The Administrative Director of the Courts is designated as the State Information Agency under this Act, as he shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State information agencies;

(2) Maintain a register of lists of courts received from other States and transit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

b. If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license officers, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (L. 1981, ch. 243, § 17.)

§ 2A: 4-30.41. Duty of the Court and Officials of this State as Responding State.

a. After the responding court receives copies of the complaint, certificate and act from the initiating court, it shall docket the case and notify the county adjuster of its action.

b. The county adjuster shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

HISTORY: (L. 1981, ch. 243, § 18.)

Cases

Construction and application.

The Uniform Reciprocal Enforcement of Support Act is not limited to cases where the obligor husband leaves the jurisdiction of the initiating State. Daly v. Daly, 21 N.J. 599, 123 A.2d 3 (1956).

Where husband and wife, who lived in New Jersey, had marital difficulties because of alleged excessive drinking of husband, and wife took the children to the home of her parents in Kentucky, and wife filed a verified complaint under the Uniform Reciprocal Support Act in Kentucky, and the complaint was certified and transmitted to New Jersey under the Uniform Reciprocal Enforcement of Support Act of New Jersey, New Jersey court could enter an order requiring husband to provide for the support of the children in Kentucky without offending the Constitution or public policy of New Jersey. Id.

Where complaint was filed by wife in Kentucky under the Uniform Reciprocal Support Act of Kentucky, as initiating State, and was certified nd transferred to New Jersey under the Uniform Reciprocal Enforcement of Support Act of New Jersey, and husband was present at all times in New Jersey, it was the New Jersey law which was applicable on question of support for children. Id.

Under Uniform Reciprocal Enforcement of Support Act, it is the obligation, not of the initiating court, but of the court in the responding State, to determine whether or not the defendant spouse is under a duty to support the plantiff spouse; and such determination may be made by the latter court only upon the basis of evidence adduced before that court and of depositions taken on notice to defendant after it has secured jurisdiction over him through a summons or warrant. Pfueller v. Pfueller, 37 N.J.Super. 106, 117 A.2d 30 (A.D. 1955).

Where defendant husband does not admit charge of desertion in proceeding under Uniform Reciprocal Enforcement of Support Act, court has open to it two alternative courses of procedure; (1) if it is feasible for wife to appear personally, notice can be given to her through initiating court to appear at specified time, at which time responding court may take her testimony and such further testimony of defendant as may be called for, or (2) if it is not feasible for her to appear personally in court, her deposition may be taken as in a civil action in superior court. Id.

Hearing.

Wife suing for support under Uniform Support of Dependents Law of New York was entitled to notice of hearing before Bergen County juvenile and domestic relations court to take husband's testimony and to opportunity to cross-examine husband. Davis v. Davis, 103 N.J.Super. 284, 247 A.2d 139 (A.D. 1968).

§ 2A: 4-30.42. Further Duties of Court and Officials in the Responding State.

a. The county adjuster on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction, the county adjuster shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

b. If the obligor or his property is not found in the county, and the county adjuster discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

c. If the county adjuster has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1981, ch. 243, § 19.)

§ 2A: 4-30.43. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1981, ch. 243, § 20.)

§ 2A: 4-30.44. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1981, ch. 243, § 21.)

Cases

Construction and application.

Where wife at very beginning of her action for support under New York Uniform Support of Dependents Law had requested that she be told of date when her husband would testify in New Jersey so that she might come to New Jersey and cross-examine him, but she was never so advised, and was not timely given a transcript of husband's testimony, fact that wife did not request right to cross-examine husband when she appeared in New York court for purpose of responding to husband's testimony and that she never asserted such a claim to New Jersey court did not amount to a waiver of right to cross-examination. Davis v. Davis, 103 N.J.Super. 284, 247 A.2d 139 (A.D. 1968).

Wife suing for support under Uniform Support of Dependents Law of New York was entitled to notice of hearing before Bergen County juvenile and domestic relations court to take husband's testimony and to opportunity to cross-examine husband. Id.

The Uniform Reciprocal Enforcement of Support Act does away with maritial disqualifications and the privilege as to confidential communications between husband and wife, but does not affect privilege against self-incrimination. Pfueller v. Pfueller, 37 N.J.Super. 106, 117 A.2d 30 (A.D. 1955).

§ 2A: 4-30.45. Rules of Evidence.

In any hearing for the civil enforcement of this Act the court is governed by the rules of evidence applicable in a civil court action in the superior court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (§ 26; § 2A:4-30.49) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1981, ch. 243, § 22.)

§ 2A: 4-30.49

Cases

Construction and application.

Action by mother of illegitimate child in juvenile and domestic relations court for support against putative father was not a "bastardy proceeding" within meaning of statute

providing that in bastardly proceedings mother of illegitimate child may be examined on oath in presence of reputed father even though mother demanded "order of filiation." M. v. F., 95 N.J.Super. 165, 230 A.2d 192 (Juv.&Dom.Rel. 1967).

Provision of Interstate Reciprocal Enforcement of Family Support Act providing that in any suits courts may order interrogatories or depositions to be taken within or without State is restricted to interstate reciprocal matters, and is not applicable to suit where husband and wife live at the same address in the same State. Ames v. Ames, 89 N.J.Super. 267, 214 A.2d 544 (Juv.&Dom.Rel. 1965).

§ 2A: 4-30.46. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the probation department of the court of the responding State. The court and county adjuster of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the county adjuster shall send a certified copy of the order to the county adjuster of any county in which it appears that proceedings to enforce the order would be effective. Before the county adjuster transfers an order to any other county adjuster for enforcement, he shall first obtain from the court an order permitting the transfer. The county adjuster to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1981, ch. 243, § 23.)

Cases

In general.

Chancery division's order fixing father's child support arrearages at $2,000 superceded California welfare agency's rights, under Uniform Reciprocal Enforcement of Support Act, to seek reimbursement for payments made for children's support while they resided in California, and since father complied with order, there was no further enforceable duty to impose upon him. Essex County Adjuster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

Visitation rights.

As a general rule, the father's duty of support and his rights of visitation with children to be supported are not interdependent, but there are exceptions where welfare of children requires that they be afforded the privilege of getting to know, love, and respect both parents. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

Court shall endeavor that children of separated parents should be imbued with love and respect for both parents, and where children are in custody of one parent, court should endeavor to effect this facet of children's welfare by conferring reasonable rights of visitation on other parent. Id.

Policy of law is against thwarting of effective visitation rights, and courts may give effectiveness to a father's visitation rights where children have been taken out of State by mother by reducing, discontinuing or suspending an existing order for support of children. Id.

Where, although wife had been justified in leaving State with children, husband expressed desire to visit children, and it appeared that their welfare might be advanced by permitting visitation rights, order, under Uniform Reciprocal Enforcement of Support Act, directing husband to make support payments, was conditioned on wife's permitting husband reasonable visitation rights and custody rights during one month of summer. Id.

Duty of support.

The jurisdiction of the juvenile and domestic relations court to order support of children, even in the direct proceedings, is concurrent with that of the superior court, and resort may properly be had to precedents established as a result of proceedings in superior court or its predecessor to determine extent of a father's duty to support his children. Daly v. Daly, 39 N.J.Super. 117, 120 A.2d 510 (Juv.&Dom.Rel. 1956) aff'd 21 N.J. 599, 123 A.2d 3.

Father's duty to support children is a continuous one and does not depend on his prosperity or on existence of duty to support wife. Id.

Where husband's conduct justified wife's removal to her home, with children, and children would not be served by living with husband, and children needed support, wife could maintain proceedings under Uniform Reciprocal Enforcement of Support Act. Id.

Where father is at all times willing to support children in New Jersey, but wife leaves State with children for purpose of obtaining a foreign divorce on ground probably not adequate for New Jersey divorce, and of using Reciprocal Enforcement of Support Act to obtain support for children and to avoid necessity of appearing in New Jersey court, and there is no showing that welfare of children is being served by keeping them in foreign State or that children are in need of support, wife should not be granted relief under the act. Id.

Where separated parents and children are residents of New Jersey, and children reside with mother, father owes children a duty of support, even though mother has unjustifiably left father so as to render herself ineligible to support for herself. Id.

§ 2A: 4-30.47. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders or orders for reimbursement thereof to be sent to the initiating court.

HISTORY: (L. 1981, ch. 243, § 24.)

§ 2A: 4-30.48. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

a. Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

b. Require the obligor to report personally and to make payments at specified intervals to the probation department of the court; and

c. Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (L. 1981, ch. 243, § 25.)

Cases

Construction and application.

In action to enforce prospectively and retroactively modifiable support or alimony obligations under divorce or separate maintenance decree of sister State, either party may tender and litigate any plea for modification that could be presented to court of State where alimony or support decree was originally rendered. Worthley v. Worthley, 283 P.2d 19, 44 C.2d 465 (1955).

§ 2A: 4-30.49. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1981, ch. 243, § 26.)

§ 2A: 4-30.50. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the probation department of the court:

a. To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

b. To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (L. 1981, ch. 243, § 27.)

§ 2A: 4-30.51. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the probation department of the court.

HISTORY: (L. 1981, ch. 243, § 28.)

§ 2A: 4-30.52. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this Act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1981, ch. 243, § 29.)

Cases

Chancery division's order fixing father's child support arrearages at $2,000 superceded California welfare agency's rights, under Uniform Reciprocal Enforcement of Support Act, to seek reimbursement for payments made for children's support while they resided in California, and since father complied with order, there was no further enforceable duty to impose upon him. Essex County Adjuster on Behalf of State of Cal. v. Brookes, 486 A.2d 875 (N.J., 1984).

§ 2A: 4-30.53. Application of Payments.

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1981, ch. 243, § 30.)

§ 2A: 4-30.54. Effect of Participation in Proceeding.

Participation in any proceeding under this Act does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (L. 1981, ch. 243, § 31.)

§ 2A: 4-30.55. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

a. Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

b. If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1981, ch. 243, § 32.)

§ 2A: 4-30.56. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (L. 1981, ch. 243, § 33.)

§ 2A: 4-30.57. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (L. 1981, ch. 243, § 34.)

§ 2A: 4-30.58. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

HISTORY: (L. 1981, ch. 243, § 35.)

§ 2A: 4-30.59. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the county adjuster upon the request of the court shall represent the obligee in proceedings under this part.

HISTORY: (L. 1981, ch. 243, § 36.)

§ 2A: 4-30.60. Registration Procedure; Notice.

a. An obligee seeking to register a foreign order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act.

b. Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy

of the registered support order and the post office address of the obligee. He shall also docket the case and notify the county adjuster of his action. The county adjuster shall proceed diligently to enforce the order.

HISTORY: (L. 1981, ch. 243, § 37.)

§ 2A: 4-30.61. Effect of Registration; Enforcement Procedure.

a. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

b. The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

c. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1981, ch. 243, § 38.)

§ 2A: 4-30.62. Docket of Prior Support Order in Juvenile and Domestic Relations Court.

Notwithstanding any of the provisions of this Act, an obligee who has previously obtained a support order for support in the superior court of New Jersey shall be permitted to docket said support order in the juvenile and domestic relations court of the appropriate county, which court shall then utilize said prior support order as constituting prima facie proof that a duty for support exists in the amount reflected in said prior support order.

HISTORY: (L. 1981, ch. 243, § 39.)

§ 2A: 4-30.63. Uniformity of Interpretation.

This Act shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1981, ch. 243, § 40.)

§ 2A: 4-30.64. Severability.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

HISTORY: (L. 1981, ch. 243, § 41.)

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§ 40-6-1. Purpose of Act.

The purpose of this Act 40-6-1 to 40-6-41 N.M.Stat.Ann. 1978 is to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1953 Comp., § 22.19.28; enact.L. 1969, ch. 242, § 1.)

Cases

No denial of due process or equal protection under this article.

Defendant's claim of deprivation of due process in that he did not have an opportunity to examine plaintiff, where no explanation was made as to why plaintiff's deposition was not taken, there was no attempt to obtain further information from her by way of discovery under the provisions of this section, and no continuance was requested, was denied as the Reciprocal Act does not violate the 14th Amendment as claimed by the defendant, and there was no denial of due process or equal protection of the law. State ex rel. Terry v. Terry, 80 N.M. 185, 453 P.2d 206 (1969).

As requirements of due process complied with.

That there is no deprivation of due process is clear. When the court of this State receives the papers from the initiating State the defendant is given notice, an opportunity to be heard, by deposition to examine and cross-examine the plaintiff and any witness that may have testified in the initiating State, to examine and cross-examine any witnesses that may testify in this State, to meet opposing evidence, and to oppose with evidence. Thus the requirements of due process are complied with. State ex rel. Terry v. Terry, 80 N.M. 185, 453 P.2d 206 (1969).

§ 40-6-2. Definitions.

As used in this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978):

A. "STATE" includes a State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted;

B. "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced, and "INITIATING COURT" means the court in which a proceeding is commenced;

C. "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced, and "RESPONDING COURT" means the court in which the responsive proceeding is commenced;

D. "COURT" means the District Court of this State, and when the context requires means the court of any other State as defined in a substantially similar reciprocal law;

E. "LAW" includes both common and statutory law;

F. "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid;

G. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced;

H. "OBLIGEE" means a person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial whether the person to whom a duty of support is owed is a recipient of public assistance;

I. "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this Act;

J. "SUPPORT ORDER" means any judgment, decree or order of support in favor of an obligee, whether temporary or final or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered;

K. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State;

L. "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person;

M. "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered; and

N. "REGISTER" means to file in the Registry of Foreign Support Orders.

HISTORY: (1953 Comp., § 22.19.30; enact.L. 1969, ch. 242, § 2; Am.Jur.2d, A.L.R., and C.J.S. refs.; 23 Am.Jur.2d, Desertion and Nonsupport, § 130.)

§ 40-6-3. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to, and not in substitution for, any other remedies.

HISTORY: (1953 Comp., § 22.19.30; enact.L. 1969, ch. 242, § 3; Am.Jur.2d, A.L.R., and C.J.S. refs.; 23 Am.Jur.2d, Desertion and Nonsupport, § 135.)

§ 40-6-4. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 7 (40-6-7 N.M.Stat.Ann. 1978), bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1953 Comp., § 22.19.31; enact.L. 1969, ch. 242, § 4; Am.Jur.2d, A.L.R., and C.J.S. refs.; 23 Am.Jur.2d, Desertion and Nonsupport, § 131.)

Cases

In general.

Laws of New Mexico have long required father to support children and such a duty is emphasized under the provisions of the Reciprocal Enforcement Act. State ex rel. Terry v. Terry, 80 N.M. 185, 453 P.2d 206 (1969).

Law of State where respondent present applicable.

Under this section and 40-607 N.M.Stat.Ann. 1978, the duty of support imposed by the laws of this State or the laws of the State where respondent was present for any period during which support is sought are binding upon the respondent regardless of the presence or residence of the petitioner-obligee. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

§ 40-6-5. Interstate Rendition.

The Governor of this State may:

A. Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

B. Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act §§ 40-6-1 to 40-6-41 N.M.Stat.Ann. 1978 apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this section need not state that the person whose surrender is demanded has fled from justice or, at the time of the commission of the crime, was in the demanding State.

HISTORY: (1953 Comp., § 22.19.32; enact.L. 1969, ch. 242, § 5; cross-refs.: as to extradition generally, see 31-4-1 N.M.Stat.Ann. 1978 et seq.)

Cases

Extradition provisions apply to reciprocal support provisions.

The real effect of this section is to make 31-4-6 N.M.Stat.Ann. 1978 specifically applicable to extradition for the crime of nonsupport. Under this section, in considering a requested extradition, the Governor of this State need not look to see whether the

demanding State has a specific statute making it a crime to fail to support a wife or child when the "failure" by the accused occurs when he is beyond the borders of the demanding State. 1953-54 Op.Atty.Gen. No. 5713 (rendered under former law).

§ 40-6-6. Conditions of Interstate Rendition.

A. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) or that any proceeding would be of no avail.

B. If, under substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1953 Comp., § 22.19.33; enact.L. 1969, ch. 242, § 6.)

§ 40-6-7. Choice of Law.

Duties of support applicable under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1953 Comp., § 22.19.34; enact.L. 1969, ch. 242, § 7.)

Cases

Law of State where respondent present applicable.

Under 40-6-4 N.M.Stat.Ann. 1978 and this section, the duty of support imposed by the laws of this State or the laws of the State where respondent was present for any period during which support is sought are binding upon the respondent regardless of the presence or residence of the petitioner-obligee. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

No absolute right of obligee to choose applicable law.

This choice of law provision was intended to prevent the obligee from having the absolute right to choose the applicable law as her interest might dictate. Altman v. Altman, 683 P.2d 62 (N.M.Ct.App., 1984).

§ 40-6-8. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continued support.

HISTORY: (1953 Comp., § 22.19.35; enact.L. 1969, ch. 242, § 8.)

§ 40-6-9. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978), including a proceeding for civil contempt, and the defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1953 Comp., § 22.19.36; enact.L. 1969, ch. 242, § 9.)

Cases

Status as Indian not shield where significant contacts with other jurisdiction.

Where the totality of the marriage relationship shows significant contacts with jurisdictions other than the Zuni reservation, appellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered into off the reservation. Natewa v. Natewa, 84 N.M. 69, 499 P.2d. 691 (1972).

§ 40-6-10. Jurisdiction.

Jurisdiction of any proceeding under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) is vested in the District Court.

HISTORY: (1953 Comp., § 22.19.37; enact.L. 1969, ch. 242, § 10.)

Cases

In general.

All that is needed for proper jurisdiction in proceeding under Act is the presence of the husband or father in the responding State, the presence of the child or the wife in another State, and the existence of a duty of support on the part of the father under the laws of the responding State. Natewa v. Natewa, 84 N.M. 69, 499 P.2d. 691 (1972).

Enforcement of provisions does not interfere with Indian government or Federal grant. The enforcement of the New Mexico Revised Uniform Reciprocal Enforcement of Support Act does not interfere with the internal self-government of the Zuni tribe or contravene an express Federal grant or reservation by placing jurisdiction of actions to enforce support obligations in the District Courts of New Mexico rather than tribal courts, as the support obligation here arises from the marital relationship between appellant and appellee. Id.

Status as Indian not shield where significant contacts with other jurisdictions.

Where the totality of the marriage relationship shows significant contacts with jurisdictions other than the Zuni reservation, appellant cannot interpose his special status as an Indian as a shield to protect him from obligations that result from his marriage to appellee which had been entered into off the reservation. Natewa v. Natewa, 84 N.M. 69, 499 P.2d. 691 (1972).

§ 40-6-11. Contents and Filing of Petition for Support; Venue.

A. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

B. The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1953 Comp., § 22.19.38; enact.L. 1969, ch. 242, § 11.)

§ 40-6-12. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney shall represent the obligee in any proceeding under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978). If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (1953 Comp., § 22.19.39; enact.L. 1969, ch. 242, § 12.)

§ 40-6-13. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1953 Comp., § 22.19.40; enact.L. 1969, ch. 242, § 13.)

§ 40-6-14. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this Act (40-6-1 to

40-6-41 N.M.Stat.Ann. 1978) to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown, and the responding State has an information agency comparable to that established in the initiating State, it shall cause three copies to be sent to the State Information Agency or other proper official of the responding State with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1953 Comp., § 22.19.41; enact.L. 1969, ch. 242, § 14.)

Cases

Duty of support need not have been adjudicated.

Reciprocal Enforcement of Support Act authorizes both finding and enforcement of a duty of child support by responding State, even where a duty of support has not been previously adjudicated in the initiating State. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

Responding State not limited to enforcement of support order.

Power of District Court in this State acting as responding State is not limited to enforcement of support order of initiating State, so that New Mexico District Court had jurisdiction to grant judgment for child support arrearages and order defendant to pay child support even though initiating State's decree may not be entitled to full faith and credit because it lacked personal jurisdiction over defendant. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

§ 40-6-15. Costs and Fees.

An initiating court shall require payment of neither a filing fee nor other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor. These costs or fees shall not have priority over amounts due to the obligee.

HISTORY: (1953 Comp., § 22.19.42; enact.L. 1969, ch. 242, § 15.)

Cases

Provisions for receipt of evidence of out-of-State obligor's defenses.

Where the obligor of an out-of-State child support obligation has provided evidence that constitutes a strong and convincing defense to the payment of support, the District Court may order that the case be continued to allow the obligee the opportunity to provide further evidence, either by appearing in person or by providing deposition testimony. Furthermore, the District Court may order that if the obligee chooses to provide evidence by a deposition, then the petitioner must pay the costs of the obligor's attorney to travel to an out-of-State deposition. It would be unjust and inequitable to limit interrogation to written questions under these circumstances. State ex rel. State of Cal. v. Ramirez, 99 N.M. 92, 654 P.2d 545 (1982).

§ 40-6-16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may:

A. As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

B. As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1953 Comp., § 22.19.43; enact.L. 1969, ch. 242, § 16.)

§ 40-6-17. State Information Agency.

A. The Human Services Department is designated as the State Information Agency under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978), and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act, and upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

B. If the State Information Agency does not know the location of the obligor or his property in the State, and no State location service is available, it shall use all means at its disposal to obtain this information, including examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.

C. After the deposit of three copies of the petition and certificate and one copy of the act of th initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the Attorney General who may undertake the representation.

HISTORY: (1953 Comp., § 22.19.44; enact.L. 1969, ch. 242, § 17, 1977, ch. 252, § 25.)

§ 40-6-18. Duty of Court and Officials of this State as Responding State.

A. After the responding court receives copies of the petition, certificate and act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

B. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

C. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General my undertake the representation.

HISTORY: (1953 Comp., § 22.19.45; enact.L. 1969, ch. 242, § 18.)

Cases

Jurisdictional requisites in responding State.

In a support proceeding initiated in another State and filed in District Court in New Mexico as the responding State, all that is needed for proper jurisdiction is the presence of the person owing support in New Mexico, the presence of the child or person owed support in another State, and the existence of a duty of support under the laws of the responding State. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

Responding State may make independent finding as to necessary support.

The responding State has the authority to make an independent finding on the amount of support necessary for the maintenance of a minor child, regardless of the amount which may have been set by another court, and has discretionary equitable power to make an order of child support retroactive to the date a complaint is received and filed with the responding State. State ex rel. Alleman v. Shoats, N.M. 684, P.2d 1177 (Ct.App., 1984).

§ 40-6-19. Further Duties of Court and Officials in Responding State.

A. The prosecuting attorney, on his own initiative, shall use all means at his disposal to locate the obligor or his property, and if, because of inaccuracies in the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

B. If the obligor or his property is not found in the county, and the prosecuting attorney discovers by any means that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court, and thereupon the clerk of the court and shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All power and duties provide by this Act (40-6-2 to 40-6-1 N.M.Stat.Ann. 1978) apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

C. If the prosecuting attorney has no information as the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1953 Comp., § 22.19.46; enact.L. 1969, ch. 242, § 19.)

Cases

Jurisdictional requisite in responding State.

In a support proceeding initiated in another State and filed in District Court in New Mexico as the responding State, all that is needed for proper jurisdiction is the presence of the person owing support in New Mexico, the presence of the child or person owed support in another State, and the existence of a duty of support under the laws of the responding State. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

§ 40-6-20. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence consulting a defense, the court shall, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party or by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1953 Comp., § 22.19.47; enact.L. 1969, ch. 242, § 20.)

Cases

Provisions for receipt of evidence of out-of State obligor's defenses.

Where the obligor of an out-of-State child support obligation has provided evidence that constitutes a strong and convincing defense to the payment of support, the District Court may order that the case be continued to allow the obligee the opportunity to provide further evidence, either by appearing in person or by providing deposition testimony. Furthermore, the District Court may order that if the obligee chooses to provide evidence by a deposition, then the petitioner must pay the costs of the obligor's attorney to travel to an out-of-State deposition. It would be unjust and inequitable to limit interrogation to written questions under these circumstances. State ex rel. State of Cal. v. Ramirez, 99 N.M. 92, 654 P.2d 545 (1982).

§ 40-6-21. Immunity from Criminal Prosecution.

If, at the hearing, the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony except for perjury committed on this testimony.

HISTORY: (1953 Comp., § 22.19.48; enact.L. 1969, ch. 242, § 21.)

§ 40-6-22. Rules of Evidence.

In any hearing for the civil enforcement of this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978), the court shall be governed by the rules of evidence applicable to a civil action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or available to a defendant in an action or proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1953 Comp., § 22.19.49; enact.L. 1969, ch. 242, § 22.)

§ 40-6-23. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act (40-6-1 to 40-6-41 N.M.Stat Ann. 1978) shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county where it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1953 Comp., § 22.19.50; enact.L. 1969, ch. 242, § 23.)

Cases

Responding State may make independent finding as to necessary support.

The responding State in a support proceeding has the authority to make an independent finding on the amount of support necessary for the maintenance of a minor child, regardless of the amount which may have been set by another court, and has discretionary equitable power to make an order of child support retroactive to the date a complaint is received and filed with the responding State. State ex rel. Alleman v. Shoats, 684 P.2d 1177 (N.M.Ct.App., 1984).

§ 40-6-24. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1953 Comp., § 22.19.51; enact.L. 1969, ch. 242, § 24.)

§ 40-6-25. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions it deems proper to assure compliance with its orders, and in particular to:

A. Require the obligor to furnish a cash deposit or a bond of a character and amount it deems proper to assure payment of any amount due;

B. Require the obligor to report personally and to make payments at specified intervals tc the clerk of the court; and

C. Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1953 Comp., § 22.19.52; enact.L. 1969, ch. 242, § 25.)

§ 40-6-26. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case is such that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1953 Comp., § 22.19.53; enact.L. 1969, ch. 242, § 26.)

§ 40-6-27. Additional Duties of Responding Court.

Through the clerk of the court, the responding court shall:

A. Transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise, and

B. Furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1953 Comp., § 22.19.54; enact.L. 1969, ch. 242, § 27.)

§ 40-6-28. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (1953 Comp., § 22.19.55; enact.L. 1969, ch. 242, § 28.)

§ 40-6-29. Proceedings Not to Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this Act (40-6-1 to 40-6-29 N.M.Stat.Ann. 1978) because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite, and in aid thereof may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding, and if the judgment therein provides for the support demanded in the petition being heard, the court must confirm its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1953 Comp., § 22.19.56; enact.L. 1969, ch. 242, § 29.)

§ 40-6-30. Application of Payments.

A support order made by a court of this State pursuant to this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) shall neither nullify nor be nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1953 Comp., § 22.19.57; enact.L. 1969, ch. 242, § 30.)

§ 40-6-31. Effect of Participation in Proceeding.

Participation in any proceeding under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) does not confer upon any court jurisdiction over any of the parties thereto in any other proceeding.

HISTORY: (1953 Comp., § 22.19.58; enact.L. 1969, ch. 242, § 31.)

§ 40-6-32. Intrastate Application.

This Act (40.6.1 to 40-6-41 N.M.Stat.Ann. 1978) applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition if filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then have duties corresponding to those imposed upon them when acting for the State as a responding State.

HISTORY: (1953 Comp., § 22.19.59; enact.L. 1969, ch. 242, § 32.)

§ 40-6-33. Appeals.

A. If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the Supreme Court if the support order was issued by a court of this State; or

(2) If the support order was issued in another State, cause the appeal to be taken to the proper appellate court in the other state.

B. In either case, expenses of appeal shall be paid from funds appropriated to the Attorney General.

HISTORY: (1953 Comp., § 22.19.60; enact.L. 1969, ch. 242, § 33.)

§ 40-6-34. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 35 through 39 (40-6-35 to 40-6-39 N.M.Stat.Ann. 1978) of this Act.

HISTORY: (1953 Comp., § 22.19.61; enact.L. 1969, ch. 242, § 34.)

§ 40-6-35. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (1953 Comp., § 22.19.62; enact.L. 1969, ch. 242, § 35.)

§ 40-6-36. Registry of Foreign Support Orders.

The clerk of the court shall maintain a "Registry of Foreign Support Orders" in which he shall file foreign support orders.

HISTORY: (1953 Comp., § 22.19.63; enact.L. 1969, ch. 242, § 36.)

§ 40-6-37. Official To Represent Obligee.

If this State is acting either as a rendering State or as a registering State, the prosecuting attorney shall represent the obligee in proceedings under §§ 35 through 39 (40-6-35 to 40-6-39 N.M.Stat.Ann. 1978) of this Act.

HISTORY: (1953 Comp., § 22.19.64; enact.L. 1969, ch. 242, § 37.)

§ 40-6-38. Registration Procedure; Notice.

A. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof;

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made; and

(3) A statement verified and signed by the obligee showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the States in which the order is registered.

B. Upon receipt of these documents, the clerk of the court shall, without payment of a filing fee or other cost to the obligee, file them in the Registry of Foreign Support Orders. Such filing constitutes registration under this Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978).

C. Promptly upon registration, the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall thereupon proceed diligently to enforce the order.

HISTORY: (1953 Comp., § 22.19.65; enact.L. 1969, ch. 242, § 38.)

§ 40-6-39. Effect of Registration; Enforcement Procedure.

A. Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

B. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is deemed confirmed.

C. At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment, but if he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period upon the obligor's furnishings the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1953 Comp., § 22.19.66; enact.L. 1969, ch. 242, § 39.)

§ 40-6-40. Uniformity of Interpretation.

This Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (1953 Comp., § 22.19.67; enact.L. 1969, ch. 242, § 40.)

§ 40-6-41. Short Title.

This Act (40-6-1 to 40-6-41 N.M.Stat.Ann. 1978) may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act."

HISTORY: (1953 Comp., § 22.19.68; enact.L. 1969, ch. 242, § 41.)

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§ 30. Short Title; Purpose.

This article may be cited and referred to as the Uniform Support of Dependents Law. The purpose of this article is to secure support in civil proceedings for dependent spouses and children from persons legally responsible for their support.

HISTORY: (L. 1958, ch. 146, § 1; am.L. 1980, ch. 281, § 2, eff. 30th day after June 19, 1980.)

Cases

Nature and scope of article.

This article proceeding is creature of statute and permits litigation of certain limited issues. Cardozzeo v. Cardozzeo, 477 N.Y.S.2d 583 (1984).

Constitutionality.

Former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) was not unconstitutional on ground that it denied equal protection because it permitted litigation of question of obligation to support separately from question of right to custody of child. Aberlin v. Domestic Relations Court of City of New York, D.C.N.Y 1958, 159 F. Supp. 59.

Former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) was constitutional. Landes v. Landes, 1955, 207 Misc. 460, 138 N.Y.S.2d 442, aff'd, 1 A.D.2d 772, 149 N.Y.S.2d 216, aff'd, 1 N.Y. 358, 153 N.Y.S.2d 14, 135 N.E.2d 562, motion den. 1 N.Y.2d 827, 153 N.Y.S.2d 208, 135 N.E.2d 716, app. dismissed 77 S.Ct. 325, 352 U.S. 948, 1 L.Ed.2d 241.

Reciprocal enforcement of a support order aimed at a husband's primary parental obligation to support his minor child may not be avoided or excused by resort to the immunities and privileges clause of U.S.C.A. Const. art. 4, § 2. Id.

In wife's proceeding under former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), to compel husband to support petitioner and spouses' minor child, any question as to constitutionality of such statute should be resolved, in first instance, in petitioner's favor, as it is presumed to be constitutional, and burden rests on respondent to establish contrary. Bellanca v. Bellanca, 1950, 99 N.Y.S.2d 507.

Construction.

Boundaries of this section et seq. cannot be enlarged by implications of other statutes. Martin v. Martin, 1968, 58 Misc.2d 459, 296 N.Y.S.2d 453.

Construction with other laws.

This article does not create an independent obligation apart from governing substantive support statutes and to extent that it refers to broader support obligation

than contained in the Family Court Act, Bk. 29A, pt. 1, it is for purposes of including and accommodating foreign support law when it is to be applied in New York courts. Slochowsky v. Lavine, 1973, 73 Misc.2d 563, 342 N.Y.S.2d 525.

Purpose.

Purpose of this section is to facilitate the enforcement of support payments for dependent children by providing for collection across State lines and, to that extent, is designed to enforce previously entered orders, not to modify or terminate them. Cahn v. Cahn, 1982, 177 Misc.2d 1054, 459 N.Y.S.2d 657.

The purpose of this article is to compel support of dependent wives and children within and without State and to provide procedure for enforcement of support against persons residing in other counties of State or in other States and territories of United States having substantially similar reciprocal laws. Schneider v. Schneider, 1972, 72 Misc.2d 423, 339 N.Y.S.2d 52.

This article was designed to permit dependents living at some distance from county in which respondent is found to obtain support without necessity of being present or appearing in county where liable parties reside. Swift v. Swift, 1971, 65 Misc.2d 1014, 319 N.Y.S.2d 655.

The purpose of former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) is to secure support in civil proceedings for dependent wife, children and poor relatives from person legally responsible for their support. Rivera v. Rivera, 1957, 5 Misc.2d 362, 160 N.Y.S.2d 171. See, also, Anonymous v. Anonymous, 1963, 38 Misc.2d 961, 239 N.Y.S.2d 315.

One of the purposes for which former §§ 2111 et. seq. of McKinney's Unconsol. Laws (now this article) was established was to cover cases where both spouses are domiciled in the same State. Hansen v. Hansen, 1955, 207 Misc. 589, 142 N.Y.S.2d 248.

Public policy.

New York has public policy that its domiciliaries or residents support their children, legitimate and illegitimate, regardless of whether children are in New York, in other States or in foreign countries. Johnson v. Berger, 1966, 51 Misc.2d 513, 273 N.Y.S.2d 484.

Reciprocity.

This article is sufficiently similar to Uniform Reciprocal Enforcement of Support Act to enable courts to give reciprocal effect to two Acts. Government of Virgin Islands v. Lorillard, C.A. Virgin Islands 1966, 358 F.2d 172.

Former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), and California law, §§ 1650 et seq. of Code Civ. Proc., relating to proceedings for support of child when person chargeable with support is beyond residential jurisdiction of court where child resides have an identity of underlying purpose and sufficient similarity to permit reciprocity. Landes v. Landes, 1955, 207 Misc. 460, 138 N.Y.S.2d 442, aff'd, 1 A.D.2d 772, 149 N.Y.S.2d 216, aff'd, 1 N.Y. 358, 153 N.Y.S.2d 14, 135 N.E.2d 562, motion den. 1 N.Y.2d 827, 153 N.Y.S.2d 208, 135 N.E.2d 716, app. dismissed 77 S.Ct. 325, 352 U.S. 948, 1 L.Ed. 2d 241.

The reciprocity mentioned in West's Ann. Code Civ. Proc. § 1650 et seq., and in former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), is not the result of an agreement or compact requiring the consent of Congress, and such sections do not deny equal protection of the law on any theory that consent of Congress is required. Id.

Any relief to wife divorced in California against New York husband must be under former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), governing support of dependents. Ross v. Ross, 1954, 206 Misc. 1073, 136 N.Y.S.2d 23.

Custody.

Former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) was not connected with custody of child but deals only with support. Aberlin v. Domestic Relations Court of City of New York, D.C.N.Y. 1958, 159 F.Supp. 59.

Proceedings under former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) are salutary in purpose and are designed to be summary and direct, and they do not provide a suitable forum to try out or determine issues as to custody, which are more properly handled in a plenary action, or by way of appeal from or modification of existing judgments, or in habeas corpus proceedings; and when such issues become inextricably involved in support proceeding, they must not be permitted to defeat primary and summary purpose of proceeding. Aberlin v. Aberlin, 1957, 3 A.D.2d 417, 161 N.Y.S.2d 305.

§ 31. Definitions.

As used in this article, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

(1) "STATE" shall mean and include any State, territory or possession of the United States, the District of Columbia, any province or territory of the Dominion of Canada, or any foreign country.

(2) "COURT" shall mean the family court of the State of New York; when the context requires, it shall mean and include a court of another State defined in and upon which appropriate jurisdiction has been conferred by a substantially similar reciprocal law.

(3) "CHILD" includes a step child, foster child, child born out of wedlock or legally adopted child and means a child under twenty-one years of age.

(4) "DEPENDENT" shall mean and include any person who is entitled to support pursuant to this article.

(5) "PETITIONER" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this article.

(6) "RESPONDENT" shall mean and include each person against whom a proceeding is instituted pursuant to this article.

(7) "PETITIONER REPRESENTATIVE" shall mean and include a corporation counsel, county attorney, State's attorney, Commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of

instituting, maintaining or prosecuting a proceeding under this article or under the laws of the State or States wherein the petitioner and the respondent reside.

(8) "SUMMONS" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the State or States wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this article.

(9) "INITIATING STATE" shall mean the State of domicile or residence of the petitioner.

(10) "RESPONDING STATE" shall mean the State wherein the respondent resides or is domiciled or found.

HISTORY: (L. 1958, ch. 146; am.L. 1962, ch. 689; L. 1967 ch. 184, § 1; L. 1968, ch. 16, § 1; L. 1973, ch. 1975, § 1.)

Cases

Court.

The Chautauqua County Court or its children's court part was not within subdivision (b) of former § 2112 et seq. of McKinney's Unconsol. Laws (now this section) defining New York courts empowered to enforce former § 2111 et seq. of McKinney's Unconsol. Laws, as support proceedings provisions of former Children's Court Act were inapplicable to such county, wherein failure to support dependents was still solely subject of "disorderly persons" prosecutions under Code of Criminal Procedure (now CPL) while said former § 2111 et seq. contemplated civil remedy only. Bellanca v. Bellanca, 1950, 99 N.Y.S.2d 507.

Dependent.

Divorced wife was not a "dependent" entitled to support under § 30 et seq. Martin v. Martin, 1968, 58 Misc.2d 459, 296 N.Y.S.2d 453.

Petitioner's representative.

In action for support pursuant to this article, petitioner could not be represented by private counsel, but had to be represented by attorney who represented governmental interests, e.g., corporation counsel, or Commonwealth attorney. Maza v. laia, 1980, 105 Misc.2d 992, 430 N.Y.S.2d 244.

County attorney is charged with duty to act as "petitioner's representative" in Genessee County. 9 Op.State Compt. 113, 1953.

§ 32. Persons Legally Liable for Support of Dependents.

For the purpose of this article, the following persons in one State are declared to be liable for the support of dependents residing or found in the same State or in another State having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for such support a fair and reasonable sum, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this article:

1. Husband liable for support of his wife or former wife;

2. Wife liable for support of her husband or former husband;

3. Parents liable for support of their child or children under twenty-one years of age. If possessed of sufficient means or able to earn such means, either or both parents may be required to pay for such child's care, maintenance and education a fair and reasonable sum according to their respective means, as the court may determine and apportion. The court shall make its award for child support after consideration of all relevant factors, including: (i) the financial resources of the parents and those of the child; (ii) the physical and emotional health of the child, and his or her educational or vocational needs and aptitudes; (iii) where practical and relevant, the standard of living the child would have enjoyed had the family remained intact; (iv) where practical and relevant, the tax consequences to the parties; and (v) the nonmonetary contributions that the parents will make toward the care and well-being of the child.

HISTORY: (L. 1958, ch. 146, § 1; am.L. 1966, ch. 131; L. 1967, ch. 184, §§ 2, 3; am.L. 1980, ch. 281, § 3; L. 1981, ch. 763, § 1; L. 1983, ch. 362, § 1.)

Cases

In general.

This article is designed for a situation in which the initiating State to which support payments are directed has contact with dependents. McFarlane v. Marshall, 1969, 33 A.D.2d 889, 307 N.Y.S.2d 517.

Family court is authorized in considering application for support under this article to assess the financial means and abilities of both father and mother. Post v. Moore, 1979, 99 Misc.2d 812, 417 N.Y.S.2d 426.

Construction with other laws.

Employee Retirement Income Security Act [29 U.S.C.A. § 1001 et seq.] does not operate to immunize pension payments from family support obligations. Sochor v. International Business Machines Corp., 1982, 90 A.D.2d 442, 457 N.Y.S.2d 317.

This section and Family Court Act §§ 413, 414 (now repealed) dealing with parental support obligations should not be declared constitutionally defective because they are sexually discriminatory, but rather should be read together so as to impose equal obligation on both spouses for such support. Amsterdam Memorial Hospital v. Bardascino, 1981, 84 A.D.2d 590, 444 N.Y.S.2d 200.

Provision of Family Court Act § 466(c), Bk. 29A, pt.1, conferring upon family court jurisdiction to entertain application to enforce order or decree granting alimony of a court of competent jurisdiction not of State of New York could not be interpolated into this article securing support in civil proceedings for dependent wives so as to afford relief in reciprocal support proceeding to a divorced wife residing in California who had a Mexican divorcee decree incorporating a separation agreement providing support payments for her benefit. Martin v. Martin, 1968, 58 Misc.2d 459, 296 N.Y.S.2d 453.

The failure to amend this article to eliminate necessity of provision by father for support of disabled child over 21 years of age living in another State when Family Court Act, Bk. 29A, pt. 1, and Social Services Law were amended to eliminate responsibility of

parent for support of any child in New York over age of 21 years was matter of omission rather than intention to preserve the responsibility. Jones v. Jones, 1966, 51 Misc.2d 610,273 N.Y.S.2d 661.

Husband, duty and liability.

Respondent, a female who attempted to change her feminine identity and to live like a man and who obtained a marriage license and participated in a marriage ceremony with mother, was chargeable with support of children born to couple as a result of artificial insemination, in view of agreement to which respondent affixed her name as husband which stated in part that children produced by artificial insemination were respondent's legitimate children and that respondent waived forever any rights to disclaim such children. Proceeding Under Article 3A of Domestic Relations Law, Erie County on Behalf of Karin T. v. Michael T., 484 N.Y.S.2d 780 (1985).

Husband's payment of wife pursuant to terms of separation stipulation did not relieve or alter his legal obligations to his wife and his children. McKean v. McKean, 463 N.Y.S.2d 672 (1983) modified on other grounds, 473 N.Y.S.2d 229.

It is no longer true that only father is responsible for support of the minor children and that hence wife's financial means are irrelevant to father's obligation. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

In matrimonial action, court erred in directing that husband pay child support beyond child's 21st birthday and court further erred in directing husband to maintain a life insurance policy for benefit of the child. Fersko v. Fersko, 1980, 76 A.D.2d 854. 428 N.Y.S.2d 518.

In absence of clear expression in separation agreement, which was incorporated by reference into divorce decree, that it was parties' intention that obligation of ex-husband to supply support for children during their "majority" would be modified by subsequent statutory enactments, he was obligated to pay the agreed sum until children reached 21, even though the age of majority was reduced to 18. Kinney v. Kinney, 1975, 48 A.D.2d 1002, 369 N.Y.S.2d 258.

Husband's obligation to support wife and children included child in esse in ventre sa mere, and order for temporary alimony and child support would be modified to require husband to pay, upon wife's request, whatever sums were necessary to cover her hospitalization expenses and medical bills necessarily incurred as result of her pregnancy. Finger v. Finger, 1972, 38 A.D.2d 956, 331 N.Y.S.2d 465.

It is husband's duty to support his wife. Virgil v. Virgil, 1967, 55 Misc.2d 64, 284 N.Y.S.2d 568.

Husband may provide for liability for support of his wife or his children to continue beyond his lifetime by separation agreement existing independently of any judgment or decree. In re Seidman's Estate, 1966, 51 Misc.2d 339, 273 N.Y.S.2d 316.

Primary obligation for support of household rests upon husband. Grishaver v. Grishaver, 1961, 225 N.Y.S.2d 924.

Husband's obligation to support wife continued unimpaired after his abandonment of her without her fault. Id.

If procedure under the Uniform Support of Dependents Law of a foreign State was essentially the same as former § 2111 et seq., of McKinney's Unconsol. Laws (now this article) it satisfied provision of former § 2113 of McKinney's Unconsol. Laws now this section that a husband in one State was hereby declared to be liable for support of his wife residing or found in the same State or another State having substantially "similar" or reciprocal laws. Florence v. Florence, 1955, 207 Misc. 177, 136 N.Y.S.2d 847.

A husband is chargeable with support of his wife, and the fact that she became sick and required medical care and that it became necessary to amputate one of her legs above the knee does not militate against his or her rights and does not relieve husband of liability for his support of her. Harrison v. Jackson, 1951, 202 Misc.19, 108 N.Y.S.2d 111.

A husband's liability for support of wife and children is superior to his liability to provide for his inamorata and her child. McCarthy v. McCarthy, 1950, 197 Misc. 596, 96 N.Y.S.2d 99.

A husband cannot evade his support obligations by voluntarily relinquishing a job. Everett v. Everett, 1949, 194 Misc. 515, 94 N.Y.S.2d 562.

The obligation to provide for a wife rests primarily on the husband, secondarily only is the obligation of the community to take care of a wife as an indigent person. Oraf v. Oraf, 1944 47 N.Y.S.2d 45. See, also, Salvatore v. Salvatore, 1945, 185 Misc. 309, 57 N.Y.S.2d 564.

Responsibility for maintenance and support of indigent wife rests squarely on the husband, who in law is chargeable therewith. McNeill v. McNeill, 1942, 35 N.Y.S.2d 585.

Ordinarily, a husband is not bound to support a wife away from his home, even though such home may be disagreeable to her. Martin v. Martin, 1942, 32 N.Y.S.2d 860.

Ability and means of husband.

Husband who wilfully disabled himself from complying with the terms of a judgment of separation, including child support and maintenance provisions and provision ordering the distribution of certain marital property, was not thereby excused from compliance by reason of his financial inability to pay. Mirtuono v. Mirtuono, 480 N.Y.S.2d 897 (1984).

Support of dependents, obtained through judicial compulsion is not ordered on unilateral appraisal of husband's income and assets but on showing of need, even during marriage, and amount is fixed having due regard to the party's means and circumstances. Phillips v. Phillips, 1956, 1 A.D.2d 393, 150 N.Y.S.2d 646, aff'd, 2 N.Y.2d. 742, 157, N.Y.S.2d 378, 138, N.E.2d 738.

In support proceedings, respondent husband's debts constitute one of circumstances which must be considered and accorded weight, regard being given to their origin and practical need for their clearance to sustain or enhance husband's business standing. Nilsson v. Nilsson, 1951, 200 Misc. 841, 108 N.Y.S.2d 954.

It is a well established common law doctrine that measure of a husband-father's duty of support is his potential and not necessarily lesser actual earnings. Manheim v. Manheim, 1951, 200 Misc. 802, 106 N.Y.S.2d 162.

In determining the amount which a husband shall be required to contribute to support of his wife and children, both needs of persons to whom support is due and ability of husband to contribute are factors to be considered. McCarthy v. McCarthy, 1950, 197 Misc. 596, 96 N.Y.S.2d 99. See also, Lebolt v. Lebolt, 1951, 200 Misc. 704, 106 N.Y.S.2d 223.

Where an unemployed and physically unemployable husband has only a limited amount of money, wife is not entitled to a support order that will deplete husband's financial reserves. Klein v. Klein, 1949, 87 N.Y.S.2d 293.

If a husband is financially able, though physically unemployable, wife is entitled to support out of his finances. Id.

A woman is entitled to support from her husband on the basis of means if, either actually or constructively, he abandoned his wife. Klein v. Klein, 1949, 87 N.Y.S.2d 293. See also, Thomas v. Thomas, 1954 131 N.Y.S.2d 290; Ferraro v. Ferraro, 1948, 192 Misc. 484, 77 N.Y.S.2d 246; Fitzgerald v. Fitzgerald, 1946, 65 N.Y.S.2d 285.

In determining amount which husband should be required to pay for wife's support, money and bonds of deceased son collected or received by respective parties, title to and disposition of which were still in dispute, should be disregarded as to insubstantial to constitute a material factor in determining wife's current reasonable needs and husband's ability to contribute thereto. Dominico v. Dominico, 1945, 57 N.Y.S.2d 79.

Husband has the primary legal duty to support wife in accordance with his means and station in life. Id.

Husband's obligation to support wife and children is to be measured with reference to his pecuniary ability, honestly exercised, or his pecuniary resources. Stafford v. Stafford, 1945, 53 N.Y.S.2d 414.

Obligation of a husband to support his wife is only at his own home and in accordance with his means. Peterson v. Peterson, 1945, 52 N.Y.S.2d 907.

Wife is entitled to support from husband according to husband's means, and not merely on a public charge basis. Lorenzo v. Lorenzo, 1944, 183 Misc. 46, 50 N.Y.S.2d 191.

In determining fair and reasonable sum husband may be required to pay for support of his wife and a child of parties, court may consider potential earning capacity as well as actual earnings of husband at the particular time. Tell v. Tell, 1944, 53 N.Y.C.2d 94. See, also, Jenkins v. Jenkins, 1942, 179 Misc. 905, 40 N.Y.S.2d 173.

The circumstances to be considered in ordering the support of a wife include the advanced age and impaired health and earning capacity of husband. Jenkins v. Jenkins, 1942, 179 Misc. 909, 40 N.Y.S.2d 173.

Alleged liabilities for business loans from friends could not be considered in determining amount of support to be given wife, where it did not clearly appear that the husband rather than family corporation which he controlled was the primary debtor. Anonymous v. Anonymous, 1940, 22 N.Y.S.2d 432.

A husband who is not gainfully employed and has no income is not required to make payments to dependents not within his ability, but amount of payments will be based on husband's means or ability to earn. Andrews v. Andrews, 1938, 166 Misc. 385, 2 N.Y.S.2d 575.

Children conceived by artificial insemination.

Husband had duty to support children conceived by artificial insemination with donor's semen as direct result of written agreement of husband and wife, and with specific consent of husband to wife's pregnancies. Anonymous v. Anonymous, 1964, 41 Misc.2d 886, 246 N.Y.S.2d 835.

Earnings or resources of wife.

While fact that wife is gainfully employed does not relieve husband of his duty to support her, wife's earnings constitute one of the circumstances of the parties to be considered in determining amount which husband should contribute to wife's support. Benedict v. Benedict, 1952, 203 Misc. 286, 115 N.Y.S.2d 352.

Weight would not be given to husband's contention that amount of earnings he should be permitted to retain for himself personally could be increased by wife's taking lodgers into house owned by parties as tenants by entirety. Everett v. Everett, 1949, 194 Misc. 515, 94 N.Y.S.2d 562.

Husband may be required to contribute a larger amount to a wife lacking all other income than to one who is partly or even wholly self-supporting, but wife's pursuit of gainful occupation does not necessarily deprive her entirely of support contribution which would be accorded to her if she were not a wage earner. Solomon v. Solomon, 1947, 191 Misc. 80, 75 N.Y.S.2d 225.

Wife's earnings are only one of the circumstances of the respective parties to which court gives due regard. Id.

Wife's earnings constituted one of circumstances to be weighted in fixing amount of support, but her energy and self-respect in being a wage earner did not exonerate husband from his marital duty of support. Tell v. Tell, 1944, 53 N.Y.S.2d 94.

Where it appeared that wife was 59 years old, ill and unable to pursue or find gainful occupation, that she had no savings or other property and that she had been forced to apply for relief, the husband was not relieved of legal duty to support wife because of wife's alleged disregard of husband ever since his temporary confinement at hospital in 1909. Anonymous v. Anonymous, 1940, 19 N.Y.S.2d 953

The fact that almost from the beginning of marriage husband failed to discharge duty of supporting wife and permitted wife to shoulder responsibility of supporting herself and children did not preclude wife from obtaining allowance of support. Id.

Former wives.

Record in Uniform Support of Dependents Law proceeding, though establishing that ex-wife habitually lived with her alleged paramour over period of 14 years, that she jointly purchased land with him and jointly paid taxes on it, that he attended her children's graduations, that she used his car, that they at times shared living expenses,

and that her children lived with them at times, was completely devoid of any proof that indicated that ex-wife, through her direct action or by implication, held herself out as her paramour's wife, e.g., used paramour's name, introduced herself as his wife, or acted in a manner that would lead others to believe that she was married to him, so that ex-wife was entitled to enforce against ex-husband alimony provision of $640 per month set forth in foreign judgment of divorce. Virginia B. v. Richard B., 476 N.Y.S.2d 748 (1984).

This article does not impose liability upon a man to support his ex-wife. Hacquin v. Collier, 1976, 87 Misc.2d 994, 386 N.Y.S.2d 633, 380 N.Y.S.2d 861.

Obligation of woman's second husband to support woman was not revived by annulment of woman's third marriage, even though court, in annulling third marriage, had to find that second marriage was still in full force and effect. Brown v. Brown, 1969, 58 Misc.2d 1020, 297 N.Y.S.2d 385.

Former wife who under foreign divorce decree was entitled to alimony from her former husband, a New York resident, was not entitled to support in proceeding under reciprocal act in view of this section imposing liability on a husband only for support of his wife. Fleischer v. Fleischer, 1965, 24 A.D.2d 667, 261 N.Y.S.2d 165.

Misconduct of wife.

Wife's refusal to have sexual intercourse was not misconduct sufficient to relieve husband of his marital obligations either by way of affirmative relief or by way of defense to wife's action for reimbursement of moneys expended on behalf of marital household. Yanoff v. Yanoff, 1952, 202 Misc. 926, 114 N.Y.S.2d 769.

Except where wife's misconduct has reduced husband's support obligation to one of indemnifying immunity against her maintenance as a public charge, he may not claim exemption solely because wife has made herself economically useful and is improving her scale of living. Manheim v. Manheim, 1951, 200 Misc. 802, 106 N.Y.S.2d 162.

In wife's proceeding against husband for support of herself and minor child, husband's disclaimer of duty of support on ground that he is sterile and hence not the child's father carries imputation of wife's adultery, which, if established, would limit husband's support obligation to minimal duty of indemnifying community against burden of wife's maintenance. Houston v. Houston, 1950, 199 Misc. 469, 99 N.Y.S.2d 199.

Husband may not be relieved of obligation to provide for his spouse until the spouse has by her behavior, actions and conduct abandoned or deemed to have abandoned marriage vows. Zlotnick v. Zlotnick, 1949, 91 N.Y.S.2d 445.

Wife was entitled to support from husband for herself and child though wife was addicted to alcohol. Morgan v. Morgan, 1948, 191 Misc. 53, 76 N.Y.S.2d 356.

A husband, abandoning his wife, must provide support for her according to his financial ability or means, but if abandonment is chargeable to wife, husband must provide support only in amount necessary to hold public harmless by preventing wife from becoming public charge. Mills v. Mills, 1946, 186 Misc. 885, 62 N.Y.S.2d 344.

Unless wife's misconduct has reduced husband's support obligation to one of indemnifying the community against her maintenance as a public charge, husband may not claim exemption solely because wife has made herself economically useful, and is improving her scale of living. Walton v. Walton, 1942, 180 Misc. 746, 42 N.Y.S.2d 459.

The rule that a husband charged with an obligation to support his wife cannot relieve himself of that obligation because of her adultery when he is living in adultery is based on public policy. Gerner v. Gerner, 1938, 167 Misc. 882, 4 N.Y.S.2d 747.

A wife was entitled to an order requiring husband to contribute to her support in accordance with her needs, notwithstanding that wife was living in adultery with another man, where support received by wife from man with whom she was living was inadequate and husband was living in adultery with another woman. Id.

Where husband and wife were both living in adultery after separation, husband would not be obligated to support wife if support wife received from her paramour was adequate to relieve the community from supporting her, since order requiring husband to support wife in such circumstances would be against public policy. Id.

Father, duty and liability; generally.

While mother's new husband was liable, due to child's destitute status, for support given to child, natural father was primarily liable. Matter of Weinberg, 461 N.Y.S.2d 224 (1983).

Irrevocable consent given by natural father to wife's new husband to adopt child did not require new husband to become obligated for support of child so as to relieve natural father of his obligation. Id.

Absent evidence that child in college, age 19, and child in boarding school, age 17, were emancipated or financially independent, they and their 12-year old brother, were eligible for child support order. Jane S. D. v. Francis X. D., 1981, 110 Misc. 2d 737, 442 N.Y.S.2d 918.

Ex-husband's statutory liability for child support was not extinguished by clause in separation agreement which provided merely that agreement's support provisions were based upon ex-husband's annual income being at least $15,000. Griffin v. Griffin, 1980, 79 A.D.2d 828, 435 N.Y.S.2d 149.

While child attains majority at age of 18, a father is nevertheless obliged to support a child under 21, and thus, since obligation includes liability for necessaries, action by child, who had attained age of 18 years, against father to recover value of legal services provided in support proceedings was proper. Fanelli v. Barclay, 1979, 100 Misc.2d 471, 419 N.Y.S.2d 813.

Under provision of divorce decree directing father to pay child support until each child reached majority, died or became emancipated, the "age of majority" was 21, rather than 18. Caldwell v. Caldwell, 1979, 100 Misc.2d 136, 418 N.Y.S.2d 543.

Even if court would have had authority to order upward modification of support provided for divorced spouses mentally handicapped adult daughter under terms of

separation agreement, under which husband was to pay one half on any additional expenses, in excess of $5,000, arising as result of deterioration of daughter's condition, if agreement was unfair or there was unanticipated change in circumstances, no upward modification would have been warranted, in that agreement was arrived at after extensive negotiation, there was no claim of fraud or overreaching and agreement itself indicated that daughter's alleged deterioration had not been unanticipated. Jarvis v. Jarvis, 1979, 99 Misc.2d 79, 415 N.Y.S.2d 557.

Divorced husband by entering into separation agreement, which provided that child support was to cease for each child as that child either completed undergraduate college, or, if child did not attend college, on child reaching 21 years of age and which was incorporated but not merged into divorce decree had waived the protection of this section providing in effect that father is only liable for support of children under 21 years of age. Streull v. Streull, 1978, 60 A.D.2d 829, 401 N.Y.S.2d 231.

Traditional notion of this section that father has primary obligation to support his children neither reflects realities of modern life nor complies with constitutional requirements of equal protection; nor is such construction consistent with § 240 requiring that support be determined having regard for circumstances of respective parties and out of property of either or both of child's parents. Lord v. Lord, 1978, 96 Misc.2d 434, 409 N.Y.S.2d 46.

Regardless of the inconclusive nature of evidence of alleged misconduct by wife by reason of her absence from marital abode, father was still responsible as spouse and parent to support recipients of public assistance, and court properly entered order pursuant to this article. Leif v. Leif, 1976, ---A.D.2d---, 390 N.Y.S.2d 429.

Father is primarily liable for the support of his children but the mother is secondarily liable if the father is dead, cannot be found, or is incapable of providing support. Kanter v. Crimmins, 1976, 87 Misc.2d 647, 385 N.Y.S.2d 935.

Where son was 21 years of age at time that decree of divorce, alimony, and child support was entered, and where son had recovered from injuries sustained in automobile accident by time of trial, husband was not obliged to support the son. Gallagher v. Gallagher, 1974, 45 A.D.2d 724, 356 N.Y.S.2d 343.

Father was responsible for support of his daughter, notwithstanding fact that daughter was living in another State with mother who had abandoned father. Hotetz v. Hotetz, 1969, 60 Misc.2d 271, 303 N.Y.S.2d 90.

Family court lacked authority to order reimbursement by husband-father to county in California for past support of wife and children in absence of provision in this article authorizing reimbursement. Id.

Ex-husband owed daughter over 21 no duty of support. Martin v. Martin, 1968, 58 Misc.2d 459, 296 N.Y.S.2d 453.

Father had the primary obligation to support and maintain his children. Brownstein v. Brownstein, 1966, 25 A.D.2d 205, 268 N.Y.S.2d 115. See, also, Levy v. Kaufman, 1960, 26 Misc.2d 57, 219 N.Y.S.2d 91.

Primary obligation of father to support his children terminates upon father's death and it then becomes mother's obligation to support the children. In re Seidman's Estate, 1966, 51 Misc.2d 339, 273 N.Y.S.2d 316.

Rule requiring father of illegitimate child domiciled in State to contribute to support of child irrespective of where mother is domiciled depends, inter alia, upon personal status that father bears to children, and carries with it incident obligation to support, and therefor expresses continuing obligation to support which is transitory irrespective of applicability of other rationales for rule. Urbancig v. Pipitone, 1965, 23 A.D.2d 193, 259 N.Y.S.2d 625.

Duty of father to support child is not changed by domicile of child. Strobl v. Sawicki, 1964, 41 Misc.2d 923, 247 N.Y.S.2d 12.

Father's obligation to support child ceased at time son reached majority. Grishaver v. Grishaver, 1961, 225 N.Y.S.2d 924.

Primary obligation to furnish medical attention for minor son is upon father. Id.

A father is chargeable with support of his child; such support includes medical care. Applications of Maak, 1961, 30 Misc.2d 610, 222 N.Y.S.2d 845.

The primary duty for support of a child is that of the father, the duty of the mother is secondary. Kinsey v. Lawrence, 1950, 100 N.Y.S.2d 597. See, also, Marconi on Behalf of Delviso v. Delviso, 1952, 117 N.Y.S.2d 412; Anonymous v. Anonymous, 1940, 173 Misc. 679, 18 N.Y.S.2d 806.

Primarily the duty to support, maintain, and educate children rests on father, and he cannot relieve himself of such obligation by contract with the wife or others or by divesting himself of his property, nor can right of child to father's support be affected by any kind of estoppel against mother. Fulde v. Stone, 1949, 196 Misc. 732, 92 N.Y.S.2d 298, reversed on other grounds 277 App.Div. 1123, 100 N.Y.S.2d 981.

The duty of a father to support his child is distinct from the obligation to maintain his wife, the child's rights having a distinct claim to consideration, since a child is never a party to a separation agreement. Kromash v. Kromash, 1943, 40 N.Y.S.2d 367.

A father was not relieved of the obligation to support his child by mother's violation of separation agreement not to live with child's maternal grandparents. Id.

The primary duty of support of child rests upon the father regardless of mother's financial resources. Walton v. Walton, 1942, 180 Misc. 746, 42 N.Y.S.2d 459. See, also, Langerman v. Langerman, 1952, 203 Misc. 230, 116 N.Y.S.2d 420; Farah v. Farah, 1951, 102 N.Y.S.2d 147; Walker v. Walker, 1950, 198 Misc. 414, 97 N.Y.S.2d 208; Moses v. Moses, 1948, 193 Misc. 890, 85 N.Y.S.2d 15; Dash v. Dash, 1948, 80 N.Y.S.2d 336; Helman v. Helman, 1947, 190 Misc. 991, 74 N.Y.S.2d 310; Schact v. Schact, 1946, 187 Misc. 461, 62 N.Y.S.2d 488; Tell v. Tell, 1944, 53 N.Y.S.2d 94; Murray v. Murray, 1944, 47 N.Y.S.2d 837; In re Wilder, 1940, 174 Misc. 244, 20 N.Y.S.2d 69; Wignall v. Wignall, 1937, 163 Misc. 910, 298 N.Y.S.251.

Father could not relieve himself of obligation to support infant children by contracting with their mother with respect to separation of father and mother and support of the children. D.M. E. v. D. D. E., 1942, 179 Misc. 406, 39 N.Y.S.2d 406.

Ability of father and needs of child.

"Net pay" as used in stipulation of divorce requiring father to pay 12 1/2 percent of his "net pay" in child support for each of his four children meant gross wages, tips and other compensation as reported on father's W-2 wage statement, plus any income tax refund received, minus all taxes, union dues and pension contributions paid. Donato v. Lucarelli, 486 N.Y.S.2d 58 (1985).

While providing a college education for a child might be considered a moral obligation under certain circumstances, court order making payment of tuition and incidental expenses a matter of compulsion on part of father would be unwarranted where mother's minimum income was $12,670 annually as against father's gross salary of $9,900 annually. Dicker v. Dicker, 1967, 54 Misc.2d 1089, 283 N.Y.S.2d 941.

A father was "incapable of supporting his child" if father was unable to pay full amount needed to support the child. Department of Welfare of City of New York v. Siebel, 1959, 6 N.Y.2d 536, 190 N.Y.S.2d 683, app. dismissed 80 S.Ct. 586, 361 U.S. 535, 4 L.Ed.2d 538.

A father is under the primary obligation to support his minor children, regardless of any resources or fault of the mother, in accordance with father's financial capacity and station in life and not merely at low subsistence level of public relief budgets. Maxim v. Maxim, 1952, 203 Misc. 610, 118 N.Y.S.2d 541. See also, Department of Welfare of City of New York v. Brancano, 1954, 205 Misc. 636, 129 N.Y.S.2d 866; Benedict v. Benedict, 1952, 203 Misc. 286, 115 N.Y.S.2d 352; Horowitz v. Horowitz, 1949, 197 Misc. 260, 93 N.Y.S.2d 9; Fulde v. Stone, 1949, 196 Misc. 732, 92 N.Y.S.2d 298, reversed on other grounds 277 App.Div. 1123, 100 N.Y.S.2d 981; Moses v. Moses, 1948, 193 Misc. 890, 85 N.Y.S.2d 15; Dash v. Dash, 1948, 80 N.Y.S.2d 336; Morgan v. Morgan, 1948, 191 Misc. 53, 76 N.Y.S.2d 356; Helman v. Helman, 1947, 190 Misc. 991, 74 N.Y.S.2d 310; Zunder v. Zunder, 1946, 187 Misc. 557, 62 N.Y.S.2d 776; Almandares v. Almandares, 1946, 186 Misc. 667, 60 N.Y.S.2d 164; James v. James, 1946, 59 N.Y.S.2d 460; Tell v. Tell, 1944, 53 N.Y.S.2d 94; Amato v. Amato, 1943, 45 N.Y.S.2d 371; D.M.E. v. D.D.E., 1942, 179 Misc. 406, 39 N.Y.S.2d 406; Johnston v. Johnston, 1941, 177 Misc. 618, 31 N.Y.S.2d 126; Szilagyi v. Szilagyi, 1939, 170 Misc. 1009, 11 N.Y.S.2d 469, aff'd, 257 App.Div. 630, 15 N.Y.S.2d 107.

The primary duty of support of minor offspring is cast upon father regardless of mother's resources, and such duty is measured by child's needs in relation to father's ability to provide and his station in life. Langerman v. Langerman, 1952, 203 Misc. 230, 116 N.Y.S.2d 420.

Amount of money to be provided by a father for support of his dependent child cannot be gauged only by the needs of child, but consideration must be given to ability of father to meet needs of child. Pinto v. Pinto, 1949, 91 N.Y.S. 2d 124.

Regardless of any fault of either parent or of any resources of mother, child born in wedlock is entitled to support by father in an amount measured by the child's needs in relation to father's ability to provide and station in life and not merely at the low subsistence level of public relief budgets. Dunbar v. Dunbar, 1948, 191 Misc. 236, 77 N.Y.S.2d 586.

Father chargeable with support of child is not limited to providing food, clothing, and shelter, but must also provide guidance, care, nursing, and education commensurate with

financial ability. Bentley v. Bentley, 1948, 191 Misc. 494, 76 N.Y.S.2d 877, rehearing den. 78 N.Y.S.2d 494. See also, Farah v. Farah, 1950, 99 N.Y.S.2d 972, rehearing den. 102 N.Y.S.2d 147.

Child was entitled to support by father in an amount measured by her needs in relation to his ability to provide and station in life, regardless of the fault of either parent. Sternau v. Sternau. 1947, 189 Misc. 856, 71 N.Y.S.2d 34.

The measure of father's obligation to support child is the child's needs with relation to the father's ability to provide and the father's station in life. Schacht v. Schacht, 1946, 187 Misc. 461, 62 N.Y.S.2d 488.

Regardless of wife's fault and absence of any right to or occasion for an order of support for herself, minor child was entitled to support according to father's means, in an amount measured by the child's needs in relation to the father's ability to provide and station in life. Zunder v. Zunder, 1946, 187 Misc. 557, 62 N.Y.S.2d 776.

Father's obligation to support children implies maintenance not merely at bare subsistence level of public relief budgets but upon a standard commensurate with the father's economic condition. Stone v. Stone, 1943, 44 N.Y.S.2d 558.

The primary obligation of support of minor child rests upon the father and involves maintenance upon a standard commensurate with the father's economic condition. Kromash v. Kromash, 1943, 40 N.Y.S.2d. 367.

The primary obligation of support of minor child rests upon its father, and the measure of such obligation is the child's present needs in relation to the father's present financial ability, regardless of the mother's resources and the scale of living she may have arranged for child. Johnston v. Johnston, 1941, 177 Misc. 618, 31 N.Y.S.2d 120. See also, Stone v. Stone, 1943, 44 N.Y.S.2d 558.

Father's present financial ability is not sole test of his obligation to support minor child, but his potential earning power must be considered. La Rocca v. La Rocca, 1932, 144 Misc. 737, 259 N.Y.S, 569.

Child of independent means.

Fact that a child may have independent means of his own effects no diminution of the father's primary obligation to support his children. Matter of Krummer's Will, 1980, 104 Misc.2d 978, 429 N.Y.S.2d 983.

Mother, duty and liability.

Former wife's decision to increase her obligations by remarrying and having second child in the second marriage could not mitigate her preexisting responsibility to contribute to support of child of her first marriage. Irene Q. v. John H., 469 N.Y.S.2d 293 (1983).

Fact that individual was mother of child and had custody and control over child imposed upon her duty of providing support for child. People v. Gladden, 462 N.Y.S.2d 115 (1983).

In proceeding where wife was seeking, in addition to other relief, increased child support from husband, Special Term, in quashing subpoena duces tecum issued by attorney for husband on his wife's employer seeking information as to her salary along with other benefits and income was in error in ruling that such information was irrelevant. Stern v. Stern, 1977, 59 A.D.2d 857, 399 N.Y.S.2d 125.

Upon discharge in bankruptcy of mother's former husband, mother became liable for necessaries furnished to her children by dentist who was unable to enforce his claim against the bankrupt former husband. Kanter v. Crimmins, 1976, 87 Misc.2d 647, 385 N.Y.S.2d 935.

Mother who furnished support for child after death of father of child was merely discharging her legal obligation to do so, and therefore she was not entitled to reimbursement from trust for benefit of child. In re Garey's Trust, 1963, 19 A.D.2d 811, 243 N.Y.S.2d 464.

Primary obligation for support of child is on father, but that obligation terminates on death of father and then it becomes obligation of mother to support child. Id.

A mother is not chargeable with her minor children's support, in absence of proof that their father, who is obligated to support children, is dead or incapable of supporting them or cannot be found within State. Lewis v. Lewis, 1956, 2 Misc.2d 849, 151 N.Y.S.2d 894, aff'd, 5 A.D.2d 674, 168 N.Y.S.2d 473 reargument den. 5 A.D.2d 777, 169 N.Y.S.2d 1014, motion den. 4 N.Y.2d 872, 174 N.Y.S.2d 241, 150 N.E.2d 710, app. den. 6 A.D.2d 690, 174 N.Y.S.2d 888.

Divorced mothers of children are not to be excluded from providing for their children because of contributions made to the support of the child by the father. Forman v. Forman, 1954, 127 N.Y.S.2d 17.

A father is primarily liable for the support of his minor child according to his means and it is only where the father is dead, or cannot be found within the State, or is incapable of supporting the child that the mother must support the child. In re Cronk, 1950, 94 N.Y.S.2d 735.

The obligation rests on mother of children to provide for their support where she is financially able to do so, and father is not. Wignall v. Wignall, 1937, 163 Misc. 910, 298 N.Y.S. 251.

Wife, duty and liability.

Wife was under no statutory obligation to respond for medical expenses incurred during husband's last illness where wife was not possessed of sufficient means to respond or able to earn such means. State University Hospital v. Moyer, 1970, 62 Misc. 2d 761, 309 N.Y.S.2d 741.

Second wife.

Earnings of father's second wife was property of that marriage in accordance with principles of equitable distribution of marital property, and since father contributed to second marriage by being a "house husband," and caring for child of second marriage, he was entitled to utilize property of second marriage for payment of his legitimate obligations, including support of five-year-old daughter of first marriage. Felisa L. v. Allen M. 1980, 107 Misc.2d 217, 433 N.Y.S.2d 715.

Parents, duty and liability.

Increased financial obligations borne by parents as the result of birth of impaired child do not extend, in eyes of the law, beyond child's 21st birthday, legislature having chosen to terminate parents' legal responsibility for support of child at age of 21, and beyond that age, State and Federal governments must assume obligation to care for those in need and lacking financial ability to pay. Bani-Esraili v. Wald, 485 N.Y.S.2d 708 (1985).

Contract to which respondent, a female who attempted to change her feminine identity and to live like a man and who obtained a marriage license and participated in a marriage ceremony with mother, was chargeable with support of children born to couple as a result of artificial insemination, in view of agreement to which respondent affixed her name as husband which stated in part that children produced by artificial insemination were respondent's legitimate children and that respondent waived forever any rights to disclaim such children. Proceeding Under Article 3A of Domestic Relations Law, Erie County on Behalf of Karin T. v. Michael T., 484 N.Y.S.2d 780 (1985).

Generally, only biological or adoptive parents are liable for support of children. Id.

A parent remains obliged to support a child until age 21, and thus is entitled to recover from the tort-feasor for medical expenses occasioned by injury of child until the child is 21. Martell v. Boardwalk Enterprises, Inc., 748 F.2d 740 (C.A.N.Y., 1984).

Duty of support of children continues on part of both parents until child's twenty-first birthday and cannot be eliminated by contract, and attempt by father to evade his statutory obligation to provide support for daughter until she reaches age of twenty-one years by means of contract with mother is not permissible. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

In action under this article, parental support of child is required until child reaches 21 years of age regardless of statutory age limit of initiating State, and fact that child is in college or boarding school does not alter this obligation, unless it is shown that child is emancipated or financially independent. Jane S. D. v. Francis X. D., 1981, 110 Misc.2d 737, 442 N.Y.S.2d 918.

Costs of child support must be apportioned between parents in accordance with their respective needs and responsibilities. Id.

Though court may enforce a parent's contractual obligation to support adult child, court is without authority to alter such obligation. Jarvis v. Jarvis, 1979, 99 Misc.2d 79, 415 N.Y.S.2d 557.

Parent must provide a common school education for his child, that is, such amount of education as is required by the State, but in the absence of special or unusual circumstances a college education is not within the purview of "necessaries" for which a parent can be obligated. Dicker v. Dicker, 1967, 54 Misc.2d 1089, 283 N.Y.S.2d 941.

In view of amendment of § 101 of the Social Services Law providing that New York parent is absolved of all responsibility for support of adult child living in New York even though child is recipient of public assistance, public policy precluded entertaining petition under this article to hold New York parent responsible for adult daughter residing in

Pennsylvania even though this article had not been amended to delete obligation imposed therein upon parents for support of child whenever such child is likely to become a public charge. Dabbs v. Burell, 1967, 53 Misc.2d 349, 278 N.Y.S.2d 436.

Parents have legal and moral obligation to support, duty resting primarily on father and secondarily on mother, even though infant has estate of his own. Siegel v. Hodges, 1961, 15 A.D.2d 571, 222 N.Y.S.2d 989.

Marriage of a child usually emancipates him or her and, in absence of agreement, terminates the obligation of parents for support even during minority. Kinsey v. Kinsey, 1951, 200 Misc. 760, 107 N.Y.S.2d 212.

Stepparent, duty and liability.

Provision of this article relating solely to enforcement of already existing duties between persons located in different States or counties created no independent obligations apart from New York's governing substantive support statutes and was insufficient to constitute, within meaning of Federal welfare regulation, a generally applicable statute by which stepparent can be required to support stepchildren. Uhrovick v. Lavine, 1974, 43 A.D.2d 481, 352 N.Y.S.2d 529, aff'd, 35 N.Y.2d 892, 364 N.Y.S.2d 890, 324 N.E.2d 360.

Children, duty and liability.

Trial court in personal injury action arising out of boating accident properly awarded injured boy's father damages for loss of his son's services from time of accident to age of 21, even though boy reached age of majority at age 18, not 21. Martell v. Boardwalk Enterprises, Inc., 748 F.2d 740 (C.A.N.Y., 1984).

Where State in which son resided had eliminated filial obligation but State in which dependent parent resided retained filial obligation, laws were not substantially similar or reciprocal and proceedings under this article could not be brought against son for support of mother. State Welfare Commissioner v. Mintz, 1967, 28 A.D.2d 14, 280 N.Y.S.2d 1007.

Grandparents, duty and liability.

New York grandparents could not be compelled to furnish support under this section for child residing in New York, since grandparents would not be liable under Family Court Act § 415, Bk. 29A, pt. 1, or Social Services Law § 101. Lenti v. Lenti, 1965, 48 Misc.2d 206, 264 N.Y.S.2d 597.

Children over twenty-one.

Special Term properly denied former husband's cross motion for downward modification of child support obligation without evidentiary hearing, where former husband's affidavits, containing conclusory statements as to infant son's status, failed to create genuine issue of fact as to son's alleged emancipation. O'Neill v. O'Neill, 486 N.Y.S.2d 351 (1985).

Absent unusual circumstances, there is no obligation to support a child after he attains his majority. Sheldon v. Sheldon, 1979, 68 A.D.2d 853, 414 N.Y.S.2d 554.

Husband's cross-motion to modify final judgment of marriage annulment so as to delete support and alimony provisions therein would be granted to extent of amending the

judgment so as to provide only for former wife's support and striking therefrom the provision referring to support of children who at time of motion were over 21 years of age, in view of 1967 amendment of this section under which a parent no longer is liable for support of a child 21 years of age or older. Hollander v. Hollander, 1967, 55 Misc.2d 107, 284 N.Y.S.2d 896.

Residence or domicile of dependents.

Parent is not liable for the support of a child during the period the child is employed and self-supporting. Eason v. Eason, 1982, 86 A.D.2d 666, 446 N.Y.S.2d 392.

Uniform Support of Dependents Law in general applies when person charged with support resides or is domiciled in a State other than New York or when person charged with support resides or is domiciled in New York and persons to whom duty of support runs reside or are domiciled in State with reciprocal laws. Swift v. Swift, 1971, 65 Misc.2d 1014, 319 N.Y.S.2d 655.

Separation agreement, effect of.

While terms of separation agreement may bind husband and wife, child is not bound thereby and has right to be supported by father regardless of existence of separation agreement's provision for support. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

§ 33. Additional Provisions Regarding Liability for Support.

For the purposes of this article:

1. A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

2. A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed the legitimate child or children of both parents.

3. A person who was or is held out as a spouse by another person by virtue of a common law marriage recognized as valid by the laws of the initiating State and of the responding State shall be deemed the legitimate spouse of such other person.

4. Notwithstanding the fact that the respondent has obtained in any State or country a final decree of divorce or separation from his or her spouse or a decree dissolving his or her marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage and for support of the former spouse.

5. The natural parents of a child born out of wedlock shall be severally liable for the support of such child, but the liability of the natural father shall not be enforceable unless he has been adjudicated to be the child's father by a court of competent jurisdiction, or he has acknowledged or shall acknowledge paternity of the child in open court or by a verified written statement.

6. No person shall be liable for the support of a child who has been adopted by his or her spouse, if such child was adopted after the adopting spouse is living separate and apart from the nonadopting spouse pursuant to a legally recognizable separation agreement or decree under this chapter. Such liability shall not be imposed for so long as the spouses remain separate and apart after the adoption.

HISTORY: (L. 1958, ch. 146, § 1; am.L. 1980, ch. 281, § 4; L. 1981, ch. 763, § 2; am.L. 1984, ch. 745, § 3.)

Cases

In general.

This section governing support of illegitimate children born out of wedlock does not afford parties with appropriate procedural mechanism to adjudicate issue of paternity. Martha D. v. Ronald C. D., 1979, 99 Misc.2d 334, 416 N.Y.S.2d 186.

Both parents are responsible for support of a child born out of wedlock in accordance with their respective means. Stone v. Chip, 1971, 68 Misc.2d 134, 326 N.Y.S.2d 520.

Construction.

Uniform Support of Dependent Laws proceedings are available to enforce support orders for children born out of wedlock. E.M. v. G.S., 470 N.Y.S.2d 77 (1983).

Provision of this section for support of out-of-wedlock children must be interpreted and applied with fairness towards alleged putative father, but at same time with objective of removing so far as possible the obstacles to equal treatment of the illegitimate with the legitimate child. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Divorce.

Husband, who had obtained Ohio divorce decree in proceeding in which wife did not appear either in person or by attorney, had a continuing obligation to support the children, whose custody had been awarded to the wife in the initial divorce decree even though Ohio court had subsequently, in another proceeding in which the wife, who was a resident of New York, did not appear either in person or by counsel, transferred custody from the wife to the husband because of wife's failure to comply with an intervening modification of the divorce decree with respect to visitation. L. v. W., 1975, 84 Misc.2d 353, 375 N.Y.S.2d 969.

Father, who was a New York resident and against whom wife had obtained a divorce, was liable for 10 1/2 year old child who resided with wife in California. Landes v. Landes, 1955, 207 Misc. 460, 138 N.Y.S.2d 442.

Adjudication of paternity.

In proceeding under the Uniform Support of Dependents Law, this article, New York court cannot look behind adjudication of paternity by court with competent jurisdiction and must give full faith and credit to judgment of its sister State; any error in rendering State is irrelevant and not ground for refusing recognition of judgment. Robertson v. Collings, 1979, 101 Misc.2d 808, 421 N.Y.S.2d 999.

Proper remedy for mother, who sought to secure support for out-of-wedlock child from alleged natural father in New York, would be to bring paternity proceeding in either New York or Connecticut, in which mother resided, and if she were successful in establishing father's paternity in Connecticut, New York court would then be compelled to give full faith and credit to that judgment in proceeding against alleged father under this article. Id.

Obligation imposed by statute for support of a child born out of wedlock is not enforceable against a putative father who has not first been adjudicated to be father of child by a court of competent jurisdiction or has not acknowledged paternity in a verified written statement or in open court. Martha S. v. Ronald C. D., 1979, 99 Misc.2d 334, 416 N.Y.S.2d 186.

Adjudication of issue of paternity in a proceeding under this article would deny court an opportunity to assess credibility of witnesses at an evidentiary hearing by denying respondent any meaningful right of cross-examination. Id.

Statute of limitations defense interposed in child support proceeding is viable only where child in question is born to parents who have never been married to each other, i.e., out of wedlock, and adjudication of paternity is necessary. Cerone v. Cerone, 1977, 58 A.D.2d 602, 395 N.Y.S.2d 240.

"Adjudication" referred to in this section providing that liability of natural father for a child born out of wedlock shall not be enforceable unless he has been adjudicated to be child's father by a court of competent jurisdiction may not be made in a proceeding brought by mother for support of child under this chapter, and before such a proceeding may be sustained, absent required acknowledgement, paternity must be established in a proceeding under the Family Court Act, Bk. 29A, pt. 1. M. v. T. 1971, 66 Misc.2d 1096, 322 N.Y.S.2d 834.

Denial of paternity.

Putative father's mere denial of paternity did not deprive Family Court of jurisdiction over proceeding to enforce separation agreement which calls for child support. Cardozzeo v. Cardozzeo, 477 N.Y.S.2d 583 (1984).

Acknowledgment of paternity.

Since consent to enter name of putative father on birth certificate of out-of-wedlock child filed pursuant to Public Health Law § 4138 did not constitute pleading under Civil Practice Law and Rules § 3011 definition of "verification" as used in Civil Practice Law and Rules was not applicable to determination of whether such consent was sufficient to form basis for proceeding under this section. Migdalia L. v. George R., 1982, 113 Misc.2d 1040, 450 N.Y.S.2d 696.

Affidavit of parentage which was executed by alleged natural father and which merely provided at its conclusion that it was sworn and subscribed to before notary on certain date, did not conform to requirements of an acknowledgment under Connecticut law, which also requires affirmation of paternity by mother, and thus affidavit was not entitled to same effect as judgment of paternity by Connecticut court in New York proceeding under the Uniform Support of Dependents Law, this article, to secure support for out-of-wedlock child from alleged father. Robertson v. Collings, 1979, 101 Misc.2d 808, 421 N.Y.S.2d 999.

Where alleged natural father's affidavit of parentage was not verified statement required in proceeding under this article seeking support from father for illegitimate child, father's liability for support was not sufficiently established. Id.

Authority is not vested in family court to enter an order for support of a child born out of wedlock unless putative father has first been adjudicated to be father of child by a court of competent jurisdiction or has acknowledged paternity in the verified written statement or in open court. Martha D. v. Ronald C. D., 1979, 99 Misc.2d 334, 416 N.Y.S.2d 186.

Alleged putative father's acknowledgment of paternity in open court during prior proceeding brought under this article constituted sufficient basis for order of support regardless of binding force of adjudication in prior proceeding, absent showing that acknowledgment was made because of coercion, fraud, or mistake. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

The verified written statement of a natural father acknowledging paternity required by this section means one in which the truth, correctness or authenticity of such written statement is verified by the affidavit, oath or deposition of such natural father. 1967, Op.Atty.Gen. (Inf.) 58.

Respondent, who executed affidavit acknowledging as his a child allegedly born out of wedlock seven months after mother was divorced, waived benefit of presumption of legitimacy of child born to married woman, if such presumption were available to respondent. Goff v. Tops, 1961, 28 Misc.2d 653, 215 N.Y.S.2d 118.

Liability for child support.

Where putative father failed to offer proof to rebut presumption of legitimacy, he was responsible for support of child. Cerone v. Cerone, 1977, 58 A.D.2d 602, 395 N.Y.S.2d 240.

Presumption of legitimacy.

Parties' marriage, however brief, acted to define child's lineage and to legitimize her, presumptively, under this section. Cerone v. Cerone, 1977, 58 A.D.2d 602, 395 N.Y.S.2d 240.

Verified written statement.

Consent to enter name of putative father on birth certificate of out-of-wedlock child, which contained sworn statement before notary public that deponent was father of child and which was accepted by city board of health as duly verified consent, was "verified written statement" sufficient to form basis for proceeding under this section. Migdalia L. v. George R., 1982, 113 Misc.2d 1040, 450 N.Y.S.2d 696.

Separation agreement, effect of.

Husband's payment to wife pursuant to terms of separation stipulation did not relieve or alter his legal obligations to his wife and his children. McKean v. McKean, 463 N.Y.S.2d 672 (1983), modified on other grounds 100 A.D.2d 537, 473 N.Y.S.2d 229.

§ 34. Jurisdiction and Powers of Court.

For the purposes of this article:

1. The court shall have jurisdiction regardless of the State of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating State or the dependent person has ever been a resident of the responding State.

2. The court of the responding State shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties. Where the petitioner's needs are so urgent as to require it, the court may make a temporary order for support pending a final determination.

3. The courts of both the initiating State and the responding State shall have the power to order testimony to be taken in either or both of such States by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

Cases

In general.

Jurisdiction of family court under this article for purpose of securing support for needy wives, children and relatives is independent of any other basis for support obligation. Blackburn v. Blackburn, 1982, 113 Misc.2d 619, 449 N.Y.S.2d 827.

Where California court had in personam jurisdiction over father through proper service and his appearance and California judgment was validly rendered, New York court was required to give full faith and credit to judgment of the California court which ordered father to pay arrearages in support pursuant to petition brought under this article, even though this article did not specifically recognize cause of action for arrearages. Matter of Proceeding for Support under Uniform Support of Dependents Law, 1978, 94 Misc.2d 588, 405 N.Y.S.2d 225.

Divorced wife's election to proceed against divorced husband by proceeding under this article, rather than pursuant to origional divorce proceeding and decree, provided an independent source of jurisdiction on responding court over husband; such jurisdiction was unrelated to continuing jurisdiction attendant to divorce proceeding. Diana P. v. Gene P., 1976, 86 Misc.2d 844, 383 N.Y.S.2d 1014.

Whatever rights State or any of its political subdivisions have under this article, they are the same as rights of dependent to whom duty of support is owed and these rights are limited to securing from court order directing the father to furnish support in sum as court should determine, and this article does not authorize reinbursements for past expenditures. Santa Clara County, Cal. v. Hughes, 1964, 43 Misc.2d 559, 251 N.Y.S.2d 579.

Under former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), it was not intended that courts should assume by implication or extension any jurisdiction not expressly granted by statute. Ross v. Ross, 1954, 206 Misc. 1073, 136 N.Y.S.2d 23.

Law governing.

Although son, who at time of hearing under Domestic Relations Law § 30 et seq. was over 18 years of age and less than 21, was living in Florida with his mother, substantive law of New York, which required parental support for a child until he or she reached 21 years of age, would govern, and thus disallowance of any support on ground that Florida inposed obligation of parental support only until an infant reached age of 18 years was error. Lalli v. Lalli, 1981, 80 A.D.2d 897, 437 N.Y.S.2d 25.

Once initiating court makes its preliminary determination as to petitioner's rights to support and proceeding is forwarded under this article, responding court determines whether respondent owes corresponding duty to petitioner; the laws of responding State are applied when determining whether such duty exists. Post v. Moore, 1979, 99 Misc.2d 812, 417 N.Y.S.2d 426.

In a support proceeding commenced in New York and forwarded to California for enforcement pursuant to this article, which is entitled to reciprocity because of its similarity to the Uniform Reciprocal Enforcement of Support Act adopted by California, California law would have to be applied in determining whether respondent could be ordered to pay arrearages. Matter of Proceeding for Support under Uniform Support for Dependents Law, 1978, 94 Misc.2d 588, 405 N.Y.S.2d 225.

In a child support proceeding commenced in New York and forwarded to California for enforcement pursuant to this article, which is entitled to reciprocity because of its similarity to the Uniform Reciprocal Enforcement Act, adopted by California, California Law applies in determining whether an 18 year old New York resident is entitled to support from her father who resides in California. 1976, Op.Atty.Gen. (Inf.) Aug. 6.

New York court having exclusive original jurisdiction over proceedings brought under Uniform Support of Dependents Law was governed by this article rather than West's Ann. Code Civ. Proc. § 1650 et seq., under which proceedings against New York father had been initiated. Santa Clara County, Cal. v. Hughes, 1964, 43 Misc.2d 559, 251 N.Y.S.2d 579.

Proceedings to enforce father's liability to support minor children under this article are not violative of his constitutional rights and California's Uniform Reciprocal Enforcement Act is sufficiently similar to be enforceable in New York. Id.

Residence or domicile of parties.

See Cases, In general, under § 35.

Support orders.

See Cases under § 37.

Child support agreements.

Absent showing of extraordinary circumstances or testimony that sum agreed upon by parties in separation agreement for child support was not fair and equitable when agreement was entered into, petitioner was entitled to amount agreed to in separation agreement for child support and that was only sum that initiating court could certify to respondent court in uniform support proceeding, but since respondent was already paying petitioner $35 per week as agreed there was no need to certify petition and transmit it to court of responding State, notwithstanding that needs of petitioner, as presented, were $75 per week. Huffman v. Huffman, 1978, 93 Misc.2d 790, 403 N.Y.S.2d 850.

Where divorce provided father with summer visitation for an extended period of time and exact dates and times of such visitation were later determined in an amended custody agreement acknowledged by both parties, court, in subsequent proceeding pursuant to this article, had authority to enforce existing rights and order that all support monies be held in escrow until actual visitation takes place. Goodwin v. Fayerman, 1976, 88 Misc.2d 690, 389 N.Y.S.2d 527.

Under agreement, incorporated in divorce decree, providing for support of children with stipulation that in event child becomes self-supporting or for any cause ceases to have "permanent residence" with the wife then amount of support shall be reduced by $125 a month, entry of 18-year-old child on a full course of study at United States Merchant Marine Academy at which major cost of attendance was borne by government, although child had to bear his own expenses for incidentals, luxuries and living expenses while on leave, did not relieve father of duty to pay $125 per month support for such child who could not be considered to be self-supporting or as having left permanent residence with the wife. Backstatter v. Backstatter, 1971, 66 Misc.2d 331, 320 N.Y.S.2d 613.

Practice and procedure.

(See Cases § 37.) Where by a previous order the New York family court had held that a Wisconsin order granting divorced father custody of his two children was valid and enforceable under Uniform Child Custody Jurisdiction Act, § 30 et seq., New York court was not required by this article to order father to support those children while wrongfully retained by mother. Vickery v. Patch, 1981, 111 Misc.2d 248, 443 N.Y.S.2d 790.

Financial circumstances of parties.

In proceeding initiated pursuant to § 37-a for registration and enforcement of order of support for dependent children and former spouse and arrears, regardless of fact that Maryland court may or may not have taken into account respective financial circumstances of parties, family court could do so. Jane S. D. v. Francis X. D., 1981, 110 Misc.2d 737, 442 N.Y.S.2d 918.

In a uniform support proceeding, the ability of the respondent to pay is determined by the responding court; the initiating court has no role to play in evaluating the respondent's means and circumstances. Huffman v. Huffman, 1978, 93 Misc.2d 790, 403 N.Y.S.2d 850.

Laws of responding State.

Under this article, once the initiating court makes its preliminary determination as to petitioner's right to support and the proceeding is forwarded, the responding court

determines whether the respondent owed a corresponding duty to the petitioner; latter determination is made according to the laws of the responding State. Nola J. v. Hugh F., 1981, 108 Misc.2d 925, 439 N.Y.S.2d 70.

Family court.

It was within the authority of the family court to condition support payments upon the former wife's compliance with visitation rights, but its conditional order in 1968 suspending former husband's duty to pay support to the New York Support Bureau could not modify a support order of the Illinois court in 1963, and the former wife's rights under the 1963 Illinois order were unimpaired. Cahn v. Cahn, 1982, 117 Misc.2d 1054, 459 N.Y.S.2d 657.

Family court had jurisdiction to consider petition by former wife, under subd. 1 of this section, for support for the parties' daughter from husband, a resident of New York, despite fact that former wife and the child resided in Oklahoma, and the divorcee was obtained in Texas. Nola J. v. Hugh F., 1981, 108 Misc.2d 925, 439 N.Y.S.2d 70.

§ 34-a. Powers of Court; Visitation.

In any proceeding to compel support of a dependent pursuant to the applicable provisions of this article, where the petitioner and respondent are residents of or domiciled or found in different counties within the State of New York, the courts of either the initiating county or responding county shall have the power, in addition to the powers granted by § 34 of this article, to make reasonable provisions for visitation of a child or children of the petitioner or respondent or for the visitation of a child or children otherwise in the care or custody of the petitioner and for whom support is the obligation of the respondent.

HISTORY: (L. 1977, ch. 379, § 1.)

Cases

In general.

Suspension of child support on basis of unjustified denial of visitation was available to father in proceeding under this article brought by South Carolina Department of Social Services to same extent as if both parties had been within State. South Carolina Dept. of Social Services v. James C.D., 464 N.Y.S.2d 942 (1983).

In proceeding under this article instituted by sister State in order to recoup portion of public assistance monies being paid to mother, father's petition for termination of family court's child support order on ground that mother refused to make arrangements for father's visitation with the parties' three children would be dismissed in lieu of fact that though the court lacked power to provide for visitation, father could go to domicile of the mother to institute an action concerning visitation and that a suspension of the child support order would not affect amount of money received by mother, and, thus, would not encourage mother to permit visitation. State of N.J. v. Pedro C. 1981, 107 Misc.2d 1001, 436 N.Y.S.2d 155.

This section does not preclude ability of family court to condition payment of child support upon visitation and other similar rights in those instances where out-of-State petitioner, pursuant to Uniform Support of Dependents Law (this article), seeks to enforce

support provisions contained or incorporated into a valid decree of divorce, which also contains mutual covenants for visitation or other similar rights; on the other hand, when support and/or visitation have not previously been determined and respondent seeks de novo visitation or other similar rights, court should decline to exercise jurisdiction and limit itself to issue of child support. Sorbello v. Cook, 1978, 93 Misc.2d 998, 403 N.Y.S.2d 434.

Domestic Relations Law provision effective July 6, 1977, stating that where petitioner and respondent are residents of or domiciled or found in different counties within State of New York, courts of either initiating or responding county have power to make reasonable provisions for visitation was intended to confer upon court authority which had not previously existed, namely, authority to allow visitation privileges in a Uniform Support of Dependents Law (this article) proceeding, and fact that legislature did not include provision containing that authority in cases involving parties residing, or otherwise located, outside New York is not significant. Id.

Scope of relief.

Absent judgment or order fixing terms of visitation, and where petitioner seeking enforcement of child support is neither resident nor domicillary of State, and is custodial parent with whom child resides, New York family court lacks jurisdiction to de novo make reasonable provisions for child visitation. Griffin v. Griffin, 1982, 89 A.D.2d 310, 455 N.Y.S.2d 271.

In proceeding brought pursuant to this article, to recover child support under judgment of divorce rendered in Arizona, family court could not properly vacate prior temporary support order, cancel all arrears and order all moneys deposited with support collection units be returned to respondent father by reason of former wife's refusal to provide court with provide court with program for reasonable visitation between father and child. Id.

Although visitation may not be considered de novo in action under this article, court has authority to enforce existing visitation rights. Jane S. D. v. Francis X. D., 1981, 110 Misc.2d 732, 442 N.Y.S.2d 918.

Child over 18.

In action under this article children who would be over 18 years of age could not be required to visit their father, and therefore, Maryland order of visitation would be continued only as to 12-year-old child of the parties. Jane S. D. v. Francis X. D., 1981, 110 Misc.2d 732, 442 N.Y.S.2d 918.

Liability for support.

Relocation by former wife, which was a consequence of remarriage, and which was not prohibited by the divorce decree, was justifiable, and did not entirely preclude exercise of former husband's visitation rights; therefore, former husband was not authorized to cease making support payments without a court order. Lee v. De Haven, 1982, 87 A.D.2d 576, 447 N.Y.S.2d 739.

While a noncustodial parent's support obligation may be suspended when the custodial parent removes the children to a distant location without justification, such a suspension is not automatic and depends upon the circumstances of the particular case. Id.

Residence of parties.

Family court was without jurisdiction to modify former husband's visitation rights when former wife relocated with the children in another State, because this section confers such authority only when the parties are residents of different counties within the State of New York. Lee v. De Haven, 1982, 87 A.D.2d 576, 447 N.Y.S.2d 739.

§ 35. Cases in Which Proceedings Are Maintainable.

A proceeding to compel support of a dependent may be maintained under this article in any of the following cases:

1. Where the petitioner and the respondent are residents of or domiciled or found in different counties of the same State. Whenever a proceeding hereunder is so maintained, the terms "initiating State" and "responding State" as used in this article shall be read and construed to mean and include respectively "initiating county" and "responding county" in relation to any such proceeding within the same State.

2. Where the petitioner resides in one State and the respondent is a resident of or is domiciled or found in another State having substantially similar or reciprocal laws.

3. Where the respondent is not and never was a resident of or domiciled in the initiating State and the petitioner resides or is domiciled in such State and the respondent is believed to be a resident of or domiciled in another State having substantially similar or reciprocal laws.

4. Where the respondent was or is a resident of or domiciled in the initiating State and has departed or departs from such State leaving therein a dependent in need of and entitled to support under this article and is believed to be a resident of or domiciled in another State having substantially similar or reciprocal laws.

HISTORY: (L. 1958, ch. 146, § 1.)

Cases

In general.

In proceeding by mother for an order directing father to make payments for the support of two children of the marriage, where it did not appear with whom or where children were residing at present time, order directing father to make payments was improper. Wohlfarth v. Wohlfarth, 1955, 1 A.D.2d 658, 146 N.Y.S.2d 490, app. den. 1 A.D.2d 804, 149 N.Y.S.2d 267.

Where mother applied for an order directing father to make payments for support of the two children of the marriage, and record did not show with whom or where the children were residing, further hearing to develop these essential facts would be ordered. Id.

Intrastate proceedings.

Intercounty support petition whereby mother sought to recover child support from father for daughter of parties was neither authorized by Family Court Act nor Domestic Relations Law where mother had already obtained an order for child support in divorce

decree entered by supreme court and there was no logical or legal reason to permit relitigation of issue in family court. Leiguarda v. Leiguarda, 1977, 91 Misc.2d 868, 398 N.Y.S.2d 795.

Where alleged putative father had been personally served 13 days before hearing in Nassau County where he was then residing and domiciled, the children's court's jurisdiction thus acquired over him was not terminated by his departure from the county three days before hearing. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Proceedings pursuant to former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) are maintainable where petitioner and respondent each reside or are domiciled or found in the same State. Hansen v. Hansen, 1955, 207 Misc.589, 142 N.Y.S.2d 248.

Where papers in proceeding pursuant to former § 2111 et seq. of McKinney's Unconsol. Laws, instituted by wife in domestic relations court of City of New York were forwarded to Dutchess County in which respondent husband was domiciled and respondent husband was summoned by Dutchess County children's court, Dutchess County children's court acquired jurisdiction over respondent husband, though affidavit of nonservice merely showed that husband could not be served within City of New York. Id.

Foreign countries.

Provisions of this section relating to jurisdiction were not applicable in proceeding by citizen of foreign country against New York resident and domicillary for support of children who appeared to be citizens of United States and who were in county in which action was brought. Swift v. Swift, 1971, 65 Misc.2d 1014, 319 N.Y.S.2d 655.

Under this article, family court had no authority to enter order with respect to support payments for children living in Panama where the initiating State was Illinois. McFarlane v. Marshall, 1969, 33 A.D.2d 889, 307 N.Y.S.2d 517.

This article does not confer jurisdiction where children reside in foreign country other than Dominion of Canada. Id.

Proceeding to determine paternity and for support of child born out of wedlock to resident of Denmark could not be brought under "Uniform Support of Dependents Law." Johnson v. Berger, 1966, 51 Misc.2d 513, 273 N.Y.S.2d 484.

Under this article, alien petitioner and child, residents of foreign country, are subject to court of demanding State, and responding State, merely out of comity, recognizes and enforces such judgments. Strobl v. Sawicki, 1964, 41 Misc. 2d 923, 247 N.Y.S.2d 12.

Family court retained jurisdiction of support proceeding brought against citizen of United States by mother, a citizen and resident of foreign country, on basis that father failed to provide support for infant residing with mother and, in event reciprocity was established, court would proceed to hear case on merits in spite of difficulties involved. Id.

States.

Where husband never consented to wife's move to California with their children and only acts engaged in by him having any connection with California consisted of brief visit

while serving in the Navy before the parties married, sending support checks there and ignoring service of summons of wife's action for divorce, California did not have personal jurisdiction over husband and thus financial terms of its divorce decree were not entitled to full faith and credit. Mogavero v. Mogavero, 475 N.Y.S.2d 605 (1984), appeal den. 469 N.E.2d 102.

Where petitioner, resident of Pennsylvania, sought support for child born out of wedlock and where Pennsylvania Uniform Reciprocal Enforcement of Support Act, 62 P.S.Pa. § 2043.29, appeared to permit adjudication of paternity in an interstate proceeding where as laws of New York, where respondent resided, contained no such authority. Pennsylvania and New York did not have "substantially similar or reciprocal laws" under this section setting forth cases in which proceedings may be maintained under New York version of Uniform Support of Dependents Law, and thus family court would not exercise jurisdiction over proceeding. Spong v. Eckleberger, 1977, 89 Misc.2d 1008, 393 N.Y.S.2d 164.

Former husband could not litigate his claim to custody of children in New York proceeding instituted by former wife pursuant to this article but was required to litigate his claim to custody in courts of Virginia where former wife had been awarded custody of children in Virginia, neither children nor former wife were present in New York and parties had not been married and had not maintained marital residence in New York. A. v. A. 1973, 72 Misc.2d 736, 340 N.Y.S.2d 672.

This article, in general, applies when person charged whith support resides or is domiciled in a State other than New York or when person charged with support resides or is domiciled in New York and persons by whom duty of support runs reside or are domiciled in State with reciprocal laws. Swift v. Swift, 1971, 65 Misc.2d 1014, 319 N.Y.S.2d 655.

Where petitioner, in proceeding against her former husband to obtain support for their minor children, failed to establish that needs of children, who had been removed by petitioner, less than a year previously, to Arizona, were other or greater than their needs while living in New York, and where there was no indication that amount previously agreed upon by parties for children's needs was insufficient at any time during almost three years of compliance, support in amount previously agreed upon would be ordered. Strecker v. Strecker, 1960, 10 A.D.2d 312, 199 N.Y.S.2d 111.

Where divorced wife had moved both her residence and domicile from Florida, she had abandoned proceeding under this article initiated in Florida to recover support from divorced husband residing in New York. Lewis v. Lewis, 1967, 55 Misc.2d 1092, 288 N.Y.S.2d 1.

Where divorced wife had abandoned Florida proceeding under this article and had not initiated proceeding in California, her new residence, corporation counsel was not entitled to represent divorced wife nor represent California District Attorney in proceeding in New York against divorced husband. Id.

Father was not absolved from duty of supporting child pursuant to unmodified judgement of supreme court because mother had removed child to Florida. Application of Meyers, 1961, 29 Misc.2d 163, 219 N.Y.S.2d 63.

Where wife who was awarded custody of child in separation judgment which gave visitation rights to father removed herself and child to another State, wife would have an adequate remedy under this article to recover support payments for child ordered in separation judgment. Goodman v. Goodman, 1959, 17 Misc.2d 712, 184 N.Y.S.2d 309.

Jurisdiction of proceedings pursuant to former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), was conferred upon the court by former § 2114 of McKinney's Unconsol. Laws (now this section) regardless of State of residence or domicile of petitioner and regardless of whether respondent had ever been a resident of State in which proceeding was initiated or whether dependent person had ever been a resident of State in which respondent was domiciled. Hansen v. Hansen, 1955, 207 Misc. 559, 142 N.Y.S.2d 248.

HISTORY: (L. 1958, ch. 146.)

§ 36. Remedies of a Public Agency.

Whenever the State or a political subdivision, or any official agency thereof, is furnishing support or is likely to furnish support to a dependent it shall have the same right to invoke the provisions of this article as the dependent to whom the duty of support is owed.

Cases

Public charges, liability.

Where wife abandoned husband without cause, because she preferred to live in California and be near her mother, husband was not liable to welfare department in California on "public charge basis" to extent of amount of public assistance provided on theory that she was being maintained with public funds. Hotetz v. Hotetz, 1969, 60 Misc.2d 271, 303 N.Y.S.2d 90.

§ 37. Procedure.

1. A proceeding under this article shall be commenced by a petitioner by filing a verified petition in the court in the county of the State wherin he resides or is domiciled, showing the name, age, residence and circumstances of the petitioner, alleging that he is in need of and is entitled to support from the respondent, giving his name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support. If, after the filing of such petition, the petitioner shall become a resident of or domiciled in a county of the State other than the county wherein the initiating court is located, such petitioner may, by filing a verified application with the court in the county of the State wherein he then resides or is domiciled, pray that the proceeding be removed to the court in the county of the State wherein he then resides or is domiciled. Any judge of the court in which such verified application for removal has been filed may thereafter issue an order directed to the initiating court directing that the entire file be forwarded to the court wherein such verified application for removal has been filed and a copy of such order be sent to the responding State court, if any. Upon receipt of said entire file by the wherein said verified application for removal has been filed, said court shall acknowledge receipt of such file to both the original initiating court and the responding State court, if any, take full jurisdiction over the proceeding in place of the original initiating court, and exercise such jurisdiction with all the same powers and to the same extent as if the proceeding had originally been commenced in said court.

2. If the respondent be a resident of or domiciled in such State and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such State, such laws shall govern and control the procedure to be followed in such proceeding.

3. If the respondent be not a resident of or domiciled in or cannot be found in the initiating State, a judge of such court shall certify that a verified petition has been filed in his court in a proceeding against the respondent under this article to compel the support of the petitioner, that a summons, duly issued out of his court for service upon the respondent has been returned with an affidavit to the effect that the respondent cannot with due diligence be located or served with such process in the initiating State, that the respondent is believed to be residing or domiciled in the responding State and that, in his opinion, the respondent should be compelled to answer such petition and should be dealt with according to law, and he shall transmit such certificate and certified copies of such petition and summons, and a copy of this uniform support of dependents law, as amended, to the appropriate court in the responding State. If the responding State is a province or territory of the Dominion of Canada, the judge of the initiating State shall also set forth in his certificate the weekly or monthly amount in United States money which, in his opinion, the respondent should be required to pay for support of the petitioner, but that such recommendation is provisional only and subject to confirmation or modification by the court of the responding State. In the event that the court of the initiating State shall have before it satisfactory evidence that the respondent is not within the initiating State or cannot be served with process there, the summons and affidavit required herein may be omitted and the certificate shall contain a statement of the reasons for said omissions and the pertinent evidence supporting the same.

4. Any judge of a court in the county of the responding State in which the respondent resides or is domiciled or found, upon presentation to him of such certificate and certified copies of such petition and summons, and of a copy of this uniform support of dependents law, as amended, shall fix a time and place for a hearing on such petition and shall issue a summons out of his court, directed to the respondent, duly requiring him to appear at such time and place. If the judge discovers that the respondent cannot be found in that county, but that he resides or is domiciled or found in another county of the responding State, the papers received from the court of the initiating State may be forwarded to the court in such other county, and the initiating State court shall thereupon be notified of such transfer. Upon receipt of the papers by the court of the county where the respondent is found, it shall acknowledge receipt of such papers to both the initiating State court and the original responding State court, and exercise such jurisdiction with all the same powers and to the same extent as if it had received the papers in the first instance direct from the initiating State court.

5. It shall not be necessary for the petitioner or the petitioner's witness to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding State to appear on behalf of and represent the petitioner at all stages of the proceeding.

6. If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating State a transcript of the clerk's minutes showing the denials entered by the respondent.

7. Upon receipt by the judge of the court in the initiating State of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding State a certified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

8. Upon the receipt of such transcript, the court in the responding State shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

9. Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witness by means of depositions or written interrogatories.

10. If a respondent, duly summoned by a court in the responding State, wilfully fails without good cause to appear as directed in the summons, he shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who willfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

11. If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof or, if, after a hearing has been duly held by the court in the responding State in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of such order shall be transmitted by the court to the court in the initiating State and such copy shall be filed with and made a part of the records of such court in such proceeding. The court may place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

12. The court making such order shall have the power to direct the respondent to make the payments required thereby at specified intervals to the support collection unit as designated by the appropriate social services district and to report personally to such unit at such times as may be deemed necessary and the respondent shall at all times be under the supervision of such unit.

13. A respondent who shall wilfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

14. Upon the receipt of a payment made by the respondent pursuant to the order of the court of the responding State in any proceeding under this article, the support collection unit as designated by the appropriate social services district shall forthwith transmit the same to the court of the initiating State.

15. The support collection unit as designated by the appropriate social services district in the responding State, upon request, shall, not later than thirty days following the end of each fiscal year, furnish to the court of the initiating State an itemized statement under oath of all payments made by the respondent during such fiscal year for the support of the petitioner in such proceeding.

16. The court of the initiating State shall receive and accept all payments made by the respondent to the support collection unit as designated by the appropriate social services district of the responding State and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating State may prescribe, the court, or support collection unit as designated by the appropriate social services district, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

17. The court of the responding State may use any power to enforce a duty of support against a respondent under this article which is otherwise available to it under the laws of the responding State.

18. Any court of the responding State having jurisdiction under this article, upon receipt of the entire file from the original responding State court, may acquire jurisdiction over the respondent in the same manner and the same extent as that of the original responding State court.

HISTORY: (L. 1958, ch. 146; am.L. 1977, ch. 516 § 24.)

Cases

Law governing.

Where New York court heard testimony in proceeding under this article and directed that transcript be sent to North Carolina where divorce and support decree were entered, only affidavit by wife before notary public was received in return and North Carolina did not transmit to New York certified transcript of proof and evidence and of its proceedings and recommendation, procedure outlined in this article was not followed and court committed error. Nass v. Nass, 1978, 64 A.D.2d 852, 407 N.Y.S.2d 344.

Issue of sufficiency of service of notice in action brought under this article by Canadian resident for support of herself and her three infant children against former husband would be governed by Family Court Act. § 427, Bk. 29A, pt 1. Grey v. Grey, 1974, 77 Misc.2d 593, 354 N.Y.S.2d 569.

The law of forum controls any matters of procedure that this article fails to cover. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Nature of proceedings.

Even if proceeding was to be regarded as one brought pursuant to Uniform Support of Dependents Law rather than as application to modify Colorado support order, relief by way of modifying foreign support order could not be granted by way of motion. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

Proceeding pursuant to this article is largely procedural and is remedial in nature; thus, any substantive issue recognizable in proceeding under Family Court Act § 411 et seq., Bk. 29A, pt. 1, Judiciary, governing jurisdiction and duties of support is recognizable in uniform support to dependents matter. Lee v. Lee, 1981, 110 Misc.2d 623, 442 N.Y.S.2d 904.

Statutes imposing responsibility upon certain relatives to contribute to support of indigent relatives are penal in nature and must be literally construed. West v. Charles, 1965, 46 Misc.2d 200, 259 N.Y.S.2d 493.

Proceedings under this article are salutory in purpose, and are designed to be summary and direct. Strecker v. Strecker, 1960, 10 A.D.2d 312, 199 N.Y.S.2d 111.

Jurisdiction.

Father's "response" to mother's proceeding for enforcement of Colorado support order, although such response constituted an appearance in proceeding, did not authorize court to make any personal judgment against the father or to modify the foreign support order by making its burden more onerous upon the father, the father's appearance having been for the purpose of resisting enforcement of the support order. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

In those cases involving foreign support orders, family court is without jurisdiction to enforce payment of arrears unless the foreign support order has been registered pursuant to § 37-a of this article. Bowers v. Bowers, 459 N.Y.S.2d 1005 (1983).

In those cases involving foreign support orders, family court is without jurisdiction to enforce payment of arrears unless the foreign support order has been registered pursuant to § 37-a of this article. Bowers v. Bowers, 1983, ---Misc.2d---, 459 N.Y.S.2d 1005.

Mother could sue father for child support in family court pursuant to Uniform Support of Dependents Law, this article, notwithstanding provision of divorce decree that divorce judgment, which included child support order, could be enforced and modified only in supreme court, Maza v. Iaia, 1980, 105 Misc.2d 992, 430 N.Y.S.2d 244.

Where law of North Carolina where divorce decree and support decrees were entered controlled procedures initiating proceeding under this article and wife followed North Carolina law. Gen.Stat.N.C. §§ 52A.1 et seq., initiation was not deficient. Nass v. Nass, 1978, 64 A.D.2d 852, 407 N.Y.S.2d 344.

Resident wife's petition, in family court, for enforcement against nonresident husband of Pennsylvania county court support order, would be dismissed as having been brought in wrong forum since subd. 12 of this section specifically provides that it is within province of "court making such order" to set and enforce support provisions, and mechanism of CPLR 302 permitting exercise of jurisdiction by New York courts over

nonresident defendants in such cases is not viable where Family Court Act, Bk. 29-A, pt. 1, or rules adopted by administrative board of judicial conference prescribe method of procedure. Becker v. Becker, 1976, 88 Misc.2d 719, 389 N.Y.S.2d 271.

The family court now has the power to render a temporary order of support under this article. Minch v. Burnham, 1973, 42 A.D.2d 584, 344 N.Y.S.2d 699.

In urgent situation, temporary support order could be entered by the family court in proceeding under this article without necessity that proof of the dependents' needs and the respondent's means be subject of the full procedures involved in making a final order. Id.

Family court lacked authority to order reimbursement by husband-father to county in California for past support of wife and children in absence of provision in this article authorizing reimbursement. Hortez v. Hortez, 1969, 60 Misc.2d 271, 303 N.Y.S.2d 90.

Although alleged putative father was not represented by an attorney in proceeding brought under this article, his appearance without raising issue of his change of residence to another county in State waived any possible objection to court's jurisdiction on that ground, for it did not relate to any basic right or element of the cause of action. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Want of date on certificate of initiating court in proceedings under this article did not deprive responding court of jurisdiction. In re Grossnickle, 1960, 25 Misc.2d 454, 211 N.Y.S.2d 359.

Former domestic relations court of the City of New York had constitutional authority to take jurisdiction of action under the reciprocal enforcement of support legislation to require divorced husband to contribute to support of child living with wife in California. Landes v. Landes, 1956, 1 N.Y.2d 358, 153 N.Y.S.2d 14, 135 N.E.2d 562, motion den. 1 N.Y.2d 827, 153 N.Y.S.2d 208, 135 N.E.2d 716, app. dismissed 77 S.Ct.325, 352 U.S. 948, 1 L.Ed.2d 241.

Where papers in proceeding pursuant to former § 2111 et seq. of McKinney's Unconsol. Laws (now this article), instituted by wife in former domestic relations court of City of New York were forwarded to Dutchess County in which respondent husband was domiciled and respondent husband was summoned by Dutchess County children's court, said court acquired jurisdiction over respondent husband, though affidavit of nonservice merely showed that husband could not be served within City of New York. Hansen v. Hansen, 1955, 207 Misc. 589, 142 N.Y.S.2d 248.

Venue.

Application by divorced father for visitation rights with respect to children residing with mother in Florida should be made before the Florida court which had jurisdiction of the children. De Filipo v. De Filipo, 1974, 45 A.D.2d 710, 356 N.Y.S.2d 100.

The family court is intended as an available forum under this article provided the statutory mandates of Family Court Act, §§ 421, 422, Bk. 29A, pt. 1, dealing respectively with venue and with persons who may originate proceedings, are satisfied. Larney v. Brown, 1972, 70 Misc.2d 546, 334 N.Y.S.2d 317.

Although the family court is intended as an available forum under this article provided the statutory mandates of Family Court Act, §§ 421, 422, Bk. 29A, pt. 1, dealing respectively with venue and with persons who may originate proceedings, are satisfied, and although, in the instant case, petitioner did satisfy the latter statutory mandate since she was clearly basing her petition on Mexican divorcee decree, petitioner failed to comply with the statutory mandate dealing with venue precluding the family court from being an available forum. Id.

Proceeding under this section was not required to be returned to initiating State where there was informal hearing at which both parties were present and represented by counsel, full inquiry was made, and there was reasonable opportunity for cross-examination and no request therefor was made. Friedman v. Friedman, 1965, 23 A.D.2d 557, 256 N.Y.S.2d 635.

Service of process.

Special proceeding for order of child support, including one to modify separation agreement unaffected by any prior order or judgment, may be maintained pursuant to this section governing procedures for actions in support of dependents; such proceeding is commenced and jurisdiction over person of defendant obtained by service of notice of petition or order to show cause, with no summons necessary. Morgan v. Morgan, 467 N.Y.S.2d 593 (1983).

Petition by former wife, a Massachusetts resident, to enforce support order of New York divorce court was properly commenced in New York by way of personal service of summons on petitioner former husband; however, if proceeding were an initial application for support, § 31 would have required wife to commence proceeding in her home State, the "initiating State." Leonard v. Palmer, 1980, 103 Misc.2d 838, 427 N.Y.S.2d 166.

Even if petitioner in paternity proceeding could not effect service within State on respondent who had removed from State since filing of petition, she could proceed in accordance with provisions of this article. Anonymous v. Anonymous, 1966, 49 Misc.2d 675, 268 N.Y.S.2d 710.

Petition.

In separate wife's petition under this article for support of the parties' daughter, family court should have considered best interests of the child; it was error for the court to dismiss the petition out of hand on ground that wife's removal of the child from the State in violation of the parties' separation agreement precluded husband from exercising his right to visitation and relieved him of any support obligations. McCarthy v. Braiman 473 N.Y.S.2d 533, (1984).

Where petition for support was properly verified and contained information required by this section and where attachment which was sought to be stricken was referred to in petition and incorporated therein, motion for an order striking attachment and other items had to be denied. State of Me. Dept. of Human Services v. Morgans, 1982, 115 Misc.2d 600, 454 N.Y.S.2d 429.

Where husband's weekly expenses were met by his net income although there was little surplus income available after anticipated expenditures, while wife's income tax return indicated loss of approximately $1,500 for taxable year 1977, wife was not in position to assist husband with support of their son who was in custody of father; accordingly, apportionment of support was not required and husband's petition for support under this article was dismissed. Post v. Moore, 1979, 99 Misc.2d 812, 417 N.Y.S.2d 426.

Where petition for support filed by Commissioner of Social Services failed to apportion needs among each of dependents named therein, so that initiating court was unable to certify entitlement of all dependents, Commissioner's petition would be dismissed. Matter of Proceeding Under Uniform Support of Dependents Law, 1977, 92 Misc.2d 776, 401 N.Y.S.2d 136.

Whether petition filed under this article was construed as application to enforce divorce decree directing divorced husband to pay $50 per week for support and maintenance of child or as an application for fair and reasonable support for child, where record contained no sworn testimony on behalf of husband, no proper showing was made to warrant an award of less than $50 per week or modification of support provisions of the divorce decree. Seeberg v. Seeberg, 1970, 35 A.D.2d 685, 314 N.Y.S.2d 686.

New York family court had jurisdiction in Nevada wife's proceeding against husband under this article even though there was no allegation in petition that wife was in need of support. Anonymous v. Anonymous, 1963, 38 Misc.2d 961, 239 N.Y.S.2d 315.

Petition under this article prima facie set forth sufficient facts to give responding court jurisdiction. In re Grossnickle, 1960, 25 Misc.2d 454, 211 N.Y.S.2d 359.

Failure of wife's petition, in proceeding for support, to allege that she was in need of support did not render petition subject to dismissal. Rivera v. Rivera, 1957, 5 Misc.2d 362, 160 N.Y.S.2d 171.

Where methods of bringing the complaint before the responding State by the initiating State were substantially parallel, provision that a husband in one State is hereby declared to be liable for the support of his wife residing or found in the same State or in another State having substantially "similar" or reciprocal laws, was satisfied, and petition filed by wife, who resided in Connecticut, against husband in New York would not be dismissed. Florence v. Florence, 1955, 207 Misc. 177, 136 N.Y.S. 2d 847.

A petition under this section against husband residing in California would be in former New York City domestic relations court, since the law adopted by State of California was similar to the New York Law. Hodges v. Hodges, 1951 202 Misc. 71, 108 N.Y.S.2d 286.

Motion papers.

Even if proceeding could be construed as application for de novo support order pursuant to Uniform Support of Dependents Law, mother's motion papers provided insufficient financial information concerning parties' respective means for the court to make any rational and fair apportionment of increased costs of child support between the parents. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

Counsel.

Family court orders permitting divorced father to pay reduced amount of child support while accumulating arrears until further hearing on his petition for modification of child support order and reinstating his original obligations to pay child support were not required to be vacated on grounds that father was unrepresented at the time the orders were entered, where family court advised father that he had a right to seek the advice and assistance of counsel and did not find him to be confused as to the nature of the proceedings. Harst v. Harst, 1981, 106 Misc.2d 636, 434 N.Y.S.2d 635.

A lack of counsel amounting to a violation of due process is tantamount to a failure of jurisdiction; an adjudication without due process cannot underpin either civil or criminal consequences. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Since a paternity adjudication has effects over and above usual civil proceedings, due process requires assignment of counsel in paternity proceedings in situations of particularized need. Id.

In view of fact that alleged putative father was at all times fully aware of purpose and effect of prior hearing held under this article and in view of fact that there was no indication whatsoever of any issue on which alleged putative father either was, or felt, in need of counsel, there was no basis for a conclusion that proceedings violated due process because alleged putative father was unrepresented or because the court failed to offer to assign counsel if alleged putative father was unable to retain an attorney. Id.

Testimony.

In the absence of wife's testimony as to her needs or those of the children, unsworn statements by the parties' attorneys in the course of colloquy between the court and counsel and financial data sheets which were neither signed nor sworn to be true could not serve as a basis for an order of support. Eason v. Eason, 1982, 86 A.D.2d 666, 446 N.Y.S.2d 392.

Refusal to permit father to object to certain questions in child support proceeding because father was in default in his support payments was error. Nadiak v. Nadiak, 1963, 19 A.D.2d 943, 243 N.Y.S.2d 997.

The county judge should take the testimony of the petitioner or respondent, as the case may be. 11 Op.State Compt. 153, 1955.

Defenses, generally.

Defense that wife is habitually living with another man and holding herself out as his wife may be pleaded in a Uniform Support of Dependents Law proceeding brought in New York. Virginia B. v. Richard B., 476 N.Y.S.2d 748 (1984).

In a Uniform Support of Dependents Law proceeding in which the defense that ex-wife has habitually lived with another man for various years is asserted, both the fact that the ex-wife habitually lived with another man and fact that she held herself out as his wife must be proved. Id.

Defense of nonpaternity and request for ordering of blood tests are matters properly raised in uniform support to dependents proceeding. Lee v. Lee, 1981, 110 Misc.2d 623, 442 N.Y.S.2d 904.

Under this article, once initiating court makes a preliminary determination as to petitioner's rights to support and forwards proceeding, responding court determines whether respondent owes corresponding duty to petitioner according to its own laws. Id.

Mother's depriving father of any substantial power of visitation did not constitute defense in proceeding under this article. Application of Meyers, 1961, 29 Misc.2d 163, 219 N.Y.S.2d 63.

Limitations.

Time limitation on paternity actions does not apply in paternity cases brought under this article. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Stay, transmittal of transcript.

Order entered in proceeding pursuant to this article directing divorced father to make support payments for children residing in Florida should not have been stayed dependent upon later determination of visitation rights in Florida. De Filipo v. De Filipo, 1974, 45 A.D.2d 710, 356 N.Y.S.2d 100.

Where, under this article, mother domiciled in Florida sought, in New York family court, enforcement of Florida decree providing for monthly support payments, and father sought reduction, county court should, at completion of hearing, have stayed proceedings and transmitted transcript to Florida court. Florida court should have taken and transmitted to the family court with its recommendations such proof as it deemed proper, and then proceeding should have been continued in New York. Nadiak v. Nadiak, 1963, 19 A.D.2d 943, 243 N.Y.S.2d 997.

Recommendation of court.

Where Connecticut court had received transcript required in a uniform support of dependent's proceeding but New York, as responding State, had not received that court's recommendation based upon all proof and evidence as required, and in fact had received no recommendation at all, such defect required dismissal of petition seeking support from alleged father of out-of-wedlock child. Robertson v. Collings, 1979, 101 Misc.2d 808, 421 N.Y.S.2d 999.

Mandate of subd. 7 of this section that initiating court's recommendation shall be based on all proof and evidence, including respondent's sworn testimony, was violated where initiating court made its recommendations solely on parties' separation agreement and petitioner's testimony. Michel v. Michel, 1969, 31 A.D.2d 313, 297 N.Y.S.2d 250.

Order of support.

Proper remedy for inequities in order of support pendente lite is a speedy trial. Cicio v. Cicio, 486, N.Y.S.2d 330 (1985).

Where terms of visitation of separated spouses' child has been fixed by virtue of prior order, family court could properly, in proceeding under this article, condition continued payment of support upon wife's compliance with husband's free and uninhibited right of visitation; consequently, should the family court determine that husband was obligated to pay child support, the court, in its discretion, could direct that such payment be deposited in escrow until such time as wife complied with previous court-ordered visitation. McCarthy v. Braiman, 473 N.Y.S.2d 533 (1984).

Uniform Support of Dependents Law order. directing father to pay child support, did not reduce or supesede his obligation to provide child support in accordance with divorce decree. Brizzi v. Brizzi, 1983, ---A.D.2d---, 460 N.Y.S.2d 345.

Father's obligation to provide child support in conformance with New York divorce decree was not reduced or superseded by his compliance with California order arising out of mother's proceeding under the Uniform Support of Dependents Law. Lanum v. Lanum, 1983, ---A.D.2d---, 460 N.Y.S.2d 344.

New York family court may properly, in proceeding under this article, where terms of visitation are already fixed, condition continued payment of support upon a petitioner's compliance with respondent's free and uninhibited right of visitation. Griffin v. Griffin, 1982, 89 A.D.2d 310, 455 N.Y.S.2d 271.

Award under this section of $20 per week toward support of minor son, who was four years of age at time of hearing, was inadequate under the circumstances and would be increased to $30 a week. Lalli v. Lalli, 1981, 80 A.D.2d 897, 437 N.Y.S.2d 25.

Where district judge in Oklahoma made preliminary finding that parties' child, who resided with her mother in Oklahoma, was entitled to child support from former husband, a resident of New York, that court's certification, under this article, was one of entitlement until the child achieved age 18, as under Oklahoma law, a parent is chargeable with the support of his or her child under the age of 18 years; therefore, under New York law, the parties' Texas divorce judgment terminated former husband's child support obligation on the child's 18th birthday. Nola J. v. Hugh F., 1981, 108 Misc.2d 925, 439 N.Y.S.2d 70.

Lack of finality of support order applies to parties and to beneficiary child, who was not a party to an agreement or action for separation or divorce. Davidow v. Davidow, 1978, 97 Misc.2d 220, 410 N.Y.S.2d 989.

As to the child, support order in divorce decree not only lacks finality so as to be modifiable, but it is also subject to collateral attack by custodian parent acting in behalf of beneficiary child in an independent proceeding. Id.

When, under law of initiating State in a uniform support proceeding, a parent is entitled to support from a child, if under the law of the responding State no such duty is found, the laws are not reciprocal, and the petition for support will not result in support order being issued by a court of responding State. Huffman v. Huffman, 1978, 93 Misc.2d 790, 403 N.Y.S.2d 850.

Evidence that mother's move to another State was prompted by health considerations supported order entered in proceeding commenced under this article and raising child support from $30 per week to $45 per week. Deutsch v. Deutsch, 1976, 53 A.D.2d 861, 385 N.Y.S.2d 357.

Order requiring father to pay certain sum for child support pursuant to this article could properly be conditioned on mother's submission of reasonable plan for visitation with child by father. Wheeler v. Wheeler, 1973, 74 Misc.2d 1021, 346 N.Y.S.2d 1013.

Generally, entry of temporary order of support in proceeding brought pursuant to this article would be improper. Schneider v. Schneider, 1972, 72 Misc.2d 423, 339 N.Y.S.2d 52.

In proceeding in which mother sought support for herself and her children under this article and respondent averred that marriage between mother and respondent was procured by duress and denied paternity, entry of temporary order of support directing respondent to pay $40 biweekly was proper. Id.

Limitations.

Time limitation on paternity actions does not apply in paternity cases brought under this article. Trent v. Loru, 1968, 57 Misc.2d 382, 292 N.Y.S.2d 524.

Stay, transmittal of transcript.

Order entered in proceeding pursuant to this article directing divorced father to make support payments for children residing in Florida should not have been stayed dependent upon later determination of visitation rights in Florida. De Filipo v. De Filipo, 1974, 45 A.D.2d 710, 356 N.Y.S.2d 100.

Where, under this article, mother domiciled in Florida sought, in New York family court, enforcement of Florida decree providing for monthly support payments, and father sought reduction, county court should, at completion of hearing, have stayed proceedings and transmitted transcript to Florida court. Florida court should have taken and transmitted to the family court with its recommendations such proof as it deemed proper, and then proceeding should have been continued in New York. Nadiak v. Nadiak, 1963, 19 A.D.2d 943, 243 N.Y.S.2d 997.

Recommendation of court.

Where Connecticut court had received transcript required in a uniform support of dependent's proceeding but New York, as responding State, had not received that court's recommendation based upon all proof and evidence as required, and in fact had received no recommendation at all, such defect required dismissal of petition seeking support from alleged father of out-of-wedlock child. Robertson v. Collings, 1979, 101 Misc.2d 808, 421 N.Y.S.2d 999.

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Order of support.

Proper remedy for inequities in order of support pendente lite is a speedy trial. Cicio v. Cicio, 486, N.Y.S.2d 330 (1985).

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Uniform Support of Dependents Law order, directing father to pay child support, did not reduce or supesede his obligation to provide child support in accordance with divorce decree. Brizzi v. Brizzi, 1983, ---A.D.2d---, 460 N.Y.S.2d 345.

Conclusiveness of determination.

In a uniform support proceeding, the court of the responding State since it is not an appellate court for the court of initating State, must respect the determination of the initiating court that entitlement exists for the petitioner, just as the court of the initiating State accedes to the responding court's determination of the duty of the respondent, in cases of error, the appeals procedure of the responding State must be used. Huffman v. Huffman, 1978, 93 Misc.2d 790, 403 N.Y.S.2d 850.

Depositions.

In mother's action for support pursuant to this article, father would have right to examine or cross-examine mother and mother's witnesses by means of depositions or written interrogatories and the same right would be given to mother. Schlecker v. Schlecker, 1981, 107 Misc.2d 586, 435 N.Y.S.2d 539.

In action for support under this article, examination and cross-examination of parties was limited to depositions and written interrogatories. Maza v. Iaia, 1980, 105 Misc.2d 992, 430 N.Y.S.2d 244.

Husband's due process rights of confrontation and cross-examination were not denied with respect to proceeding under this article where under both North Carolina law, Gen.Stat.N.C. § 52A.12.2, which controlled initiation procedure and New York law courts had power to order and parties had right to examination and cross-examination by deposition or written interrogatories. Nass v. Nass, 1978, 64 A.D.2d 852, 407 N.Y.S.2d 344.

Opportunity to appear and defend.

Ex-husband was not denied his right to challenge ex-wife's support petition at a hearing in accordance with procedures of the Domestic Relations Law, where he had every opportunity to controvert the petition and enter a verified denial of its material allegations but chose to rely solely on defense that ex-wife had breached visitation provision incorporated in their divorce decree. Contra Costa County ex rel. Sutton v. Sutton, 485 N.Y.S.2d 83, (1985).

Special term did not abuse its discretion by granting an order of commitment for husband's willful failure to comply with the terms of a judgment of separation without first conducting a hearing, where husband raised the very same arguments in opposition to wife's motion for an order of commitment that he raised at the hearing to determine whether he should be held in contempt. Mirtuono v. Mirtuono, 480 N.Y.S.2d 897 (1984).

Where husband was denied opportunity to appear, reply and cross-examine wife by means of depositions or written interrogatories as to her testimony taken ex parte in another State pursuant to Uniform Support of Dependents Law, order directing husband to resume child support payments and pay arrearages was invalid, and cause would be remanded for completion of testimony. Clayton v. Clayton, 1980, 79 A.D.2d 672, 433 N.Y.S.2d 875.

Filing.

Family court orders permitting divorced father to pay reduced amount of child support while accumulating arrears until further hearing on his petition for modification of child support order and reinstating his original obligation to pay child support were not

required to be vacated as invalid and irregular, despite fact that they were not filed in county clerk's office but in the permanent court file. Hurst v. Hurst, 1981, 106 Misc.2d 636, 434 N.Y.S.2d 635.

Cross-examination.

In mother's action for support pursuant to this article, mother would be required to answer questions forwarded by father in form of cross-examination. Schlecker v. Schlecker, 1981, 107 Misc.2d 586, 435 N.Y.S.2d 539.

Interrogatories.

Where trial had commenced in proceedings under this article, this section dealing with examination and cross-examination of witnesses during trial applied to a demand for interrogatories. Tanya W. v. Rosa W., 1983, 117 Misc.2d 619, 458 N.Y.S.2d 869.

Interrogatory asking daughter to set forth the religious and family differences which led to separation between mother and daughter was not improper in proceeding under this article since that interrogatory merely sought to clarify daughter's testimony to effect that religous and family differences led to her separation from her mother. Id.

Capacity to sue.

Ordinarily, children are unable to enforce provisions of an agreement between parents. Proceeding Under Article 3A of Domestic Relations Law, Erie County on Behalf of Karin T. v. Michael T., 484 N.Y.S.2d 780 (1985).

Former husband, not being in the dependent category or one who required support, was not authorized to initiate Uniform Support of Dependents Law proceeding. Smith v. Smith, 476 N.Y.S.2d 760 (1984).

South Carolina Department of Social Services had capacity to sue father of child in New York court to recover child support pursuant to terms of divorce decree. South Carolina Dept. of Social Services v. James C.D., 464 N.Y.S.2d 9042 (1983).

Rules of evidence.

Family court has jurisdiction under this article to determine parental status of children born within marriage and court is statutorily bound to apply same presumptions and rules of evidence available to litigants in any other support proceeding brought in family court. Cardozzeo v. Cardozzeo, 477 N.Y.S.2d 583 (1984).

Waiver.

Conduct of ex-husband alleged in ex-wife's support petition constituted a waiver of his right to challenge her noncompliance with visitation provisions of divorce decree. Contra Costa County ex rel. Sutton v. Sutton, 485 N.Y.S.2d 83 (1985).

§ 37-a. Registration of Foreign Support Orders.

1. If the duty of support for any child is based on a foreign support order of a State which has a reciprocal enforcement of support act, the petitioner shall have the additional remedies provided in this section.

2. The petitioner, or support collection unit on petitioner's behalf, may register the foreign child support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

3. The clerk of the court shall maintain a Registry of Foreign Child Support Orders in which he shall file foreign support orders.

4. If this State is acting either as a responding or an initiating State the support collection unit as designated by the appropriate social services district, upon the request of the court, shall represent the petitioner in proceedings under this section.

5. (a) A petitioner seeking to register a foreign child support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modification thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a verified statement showing the post office address of the respondent, the amount of child support remaining unpaid, a description and to the best of the petitioner's knowledge the location of any property of the respondent available upon execution, the name and address of any employer or income payor as defined in § 5241 of the Civil Practice Law and Rules, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the petitioner, shall file them in the Registry of Foreign Child Support Orders. The filing constitutes registration under this section.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the respondent at the address given a notice of the registration with a copy of the registered child support order and the post office address of the petitioner. He shall also docket the case and notify the support collection unit of his action. The support collection unit shall proceed diligently to enforce the order.

6. (a) Upon registration the registered foreign child support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The respondent shall have twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered child support order is confirmed. At the hearing the respondent may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the respondent has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the respondent furnishes the same security for payment of the support ordered that is required for a support order of this State.

7. Enforcement of a foreign support order registered pursuant to this section shall include collection of any arrears which may have accrued under such order prior to

registration hereunder, in addition to any amounts becoming due and owing following such registration.

HISTORY: (L. 1980, ch. 227, § 1; am.L. 1985, ch. 809, § 5.)

Cases

Power of family court.

Maxim expressio unius est exclusio alterius, or what is omitted was intended to be omitted, was applicable to Domestic Relations Law provision as to enforcement of registered child support order. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

In proceeding initiated pursuant to this section for registration and enforcement of order of support for dependent children and former spouse and arrears, regardless of fact that Maryland court may or may not have taken into account respective financial circumstances of parties, family court could do so. Jane S. D. v. Francis X. D., 1981, 110 Misc.2d 737, 442 N.Y.S.2d 918.

Family court was enpowered, under this section to register and enforce Maryland order of support for children and former spouse only as order related to child support. Id.

Arrears.

Registration of foreign support order under this section providing for such registration did not entitle wife seeking support for child to arrears; nor, did fact that arrears might eventually be sought preclude registration. M.H. v. C.M., 461 N.Y.S.2d 696 (1983).

In those cases involving foreign support orders. Family court is without jurisdiction to enforce payment of arrears unless the foreign support order has been registered pursuant to this section. Bowers v. Bowers, 1983, ---Misc.2d---, 459 N.Y.S.2d 1005.

Under this section, award or cancellation of arrears may not be made in a proceeding on a petition for registration. Jane S.D. v. Francis X.D., 1981, 110 Misc.2d 737, 442 N.Y.S.2d 918.

Due process.

Entry of divorce judgment of another jurisdiction providing for child support as judgment of New York presents no due process problems because there is presumption that party against whom judgment was rendered was, at that time, subject to jurisdiction of foreign court and had full and fair opportunity to defend action. M.H. v. C.M., 461 N.Y.S.2d 696 (1983).

Vacating registration.

Where divorced husband did not move to vacate registration of foreign divorce judgment or for other relief, support order of Colorado court was confirmed. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

Where divorce decree entered by the circuit court for Montgomery County, Maryland, incorporated but did not merge separation agreement entered into by parties, and that

agreement contained specific provision for child support, registration of foreign child support order would not be vacated on grounds judgment of divorce laced decretal paragraph requiring payment of child support. M.H. v. C.M., 461 N.Y.S.2d 696 (1983).

Filing and forwarding of papers by Maryland court indicated that modification of child support had imprimatur of Maryland court; therefore, registration of foreign child support order would not be vacated on ground that even though order incorporated separation agreement, amount provided in agreement had been modified while order had never been modified. Id.

Appearance.

Father's "response" to mother's proceeding for enforcement of Colorado support order, although such response constituted an appearance in proceeding, did not authorize court to make any personal judgment against the father or to modify the foreign support order by making its burden more onerous upon the father, the father's appearance having been for the purpose of resisting enforcement of the support order. MacFadden v. Martini, 463 N.Y.S.2d 674 (1983).

§ 38. Appeals; Effectiveness of Orders.

Any respondent in a proceeding brought under the provisions of this article shall have the same right of appeal as in civil proceedings or actions brought in the same court. Any order for support made by the court shall not be affected by an appeal but shall continue in effect until the appeal is decided and thereafter, if the order is affirmed, until changed by further order of the court.

HISTORY: (L. 1938, ch. 146, § 1.)

§ 38-a. Evidence and Presumptions.

In any hearing under this Act in either an initiating State court or a responding State court, there shall be applicable the same presumptions and other rules of evidence, whether statutory, decisional, or under court rules, as are available to the parties in other civil proceedings or actions brought in that same court.

HISTORY: (L. 1958, ch. 234, § 1.)

Cases

In general.

When a respondent in a proceeding to compel support of a child, brought pursuant to this article, denies the allegations in a petition forwarded from initiating State, he is entitled to a hearing on the merits; the same rules of evidence apply as in other civil proceedings. Rinner v. Cannon, 1970, 33 A.D.2d 923, 307 N.Y.S.2d 272.

Evidence of wife taken in Florida proceeding to compel support of child under this article was properly admitted in New York children's court to which proceeding was transferred, although husband was not accorded right of cross-examination. Application of Meyers, 1961, 29 Misc.2d 163, 219 N.Y.S.2d 63.

§ 39. Duty of Petitioners' Representatives.

It shall be the duty of all petitioners' representatives of this State to appear in this State on behalf of and represent the petitioner in every proceeding pursuant to this article, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating State or the responding State.

HISTORY: (L. 1958, ch. 146, § 1.)

Cases

County attorney.

County attorney is charged with duty to act as "petitioner's representative" in Genesee County. 9 Op.State Compt. 113, 1953.

§ 40. Expenses of Proceedings.

Expenses of stenographic records of court proceedings and of certification of court records shall be county charge and shall be paid out of the county treasury.

HISTORY: (L. 1958, ch. 146, § 1.)

Cases

Costs.

This article does not authorize an award for costs of proceedings against father to compel his support of children. Santa Clara County, Cal. v. Hughes, 1964, 43 Misc.2d 559, 251 N.Y.S.2d 579.

§ 41. Construction of Article.

1. This article shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

2. This article shall not be construed to confer jurisdiction on the court of the initiating or responding State in any pending or future action for divorce, legal separation or annulment.

Cases

In general.

Jurisdiction of family court under this article for purpose of securing support for needy wives, children and relatives is independent of any other basis for support obligation. Blackburn v. Blackburn, 1982, 113 Misc.2d 619, 449 N.Y.S.2d 827.

Proceeding commenced pursuant to this article is an additional remedy to any other remedy a wife may have available to her. Coniglio v. Conigilo, 1980, 104 Misc.2d 491, 428 N.Y.S.2d 440.

The boundries of former § 2111 et seq. of McKinney's Unconsol. Laws (now this article) cannot be enlarged by implications of other statutes but are fixed by four corners of the enactment. Vincenza v. Vincenza, 1950, 197 Misc. 1027, 98 N.Y.S.2d 470.

Incorporation by reference.

Former § 2118 of McKinney's Unconsol. Laws (now this section) did not incorporate other statutes by reference. Vincenza v. Vincenza, 1950, 197 Misc. 1027, 98 N.Y.S.2d 470.

Additional award of support.

Uniform Support of Dependents Law order, directing father to pay child support, did not reduce or supersede his obligation to provide child support in accordance with divorce decree. Brizzi v. Brizzi, 1983, ---A.D.2d---, 460 N.Y.S.2d 345.

Father's obligation to provide child support in conformance with New York divorce decree was not reduced or superseded by his compliance with California order arising out of mother's proceeding under the Uniform Support of Dependents Law. Lanum v. Lanum, 1983, ---A.D.2d---, 460 N.Y.S.2d 344.

Fact that divorce decree had already provided for a level of child support did not preclude jurisdiction of the family court to entertain a proceeding under this article, and the court had authority in such proceeding to determine support on a de novo basis, not bound by the award in the supreme court decree. Coniglio v. Coniglio, 1980, 104 Misc.2d 491, 428 N.Y.S.2d 440.

§ 41-a. Proceedings Not To Be Stayed.

No pending and undetermined action for divorce, separation, annulment, or dissolution or habeas corpus custody proceeding instituted by the respondent shall operate to stay any proceeding under this Act against such respondent for support of a dependent.

HISTORY: (L. 1958, ch. 538, § 1.)

§ 42. Uniformity of Interpretation.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the States which enact it.

HISTORY: (L. 1958, ch. 146, § 1.)

§ 43. Separability.

If any part of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of such article or the application thereof to other persons and circumstances.

HISTORY: (L. 1958, ch. 146, § 1.)

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§ 52A-1. Short Title.

This chapter may be cited as the "Uniform Reciprocal Enforcement of Support Act."

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

Cases

This chapter does not establish additional grounds for support; it produces additional means of enforcing support obligations already established. Stevens v. Stevens, ---N.C.App.---, 314 S.E.2d 786 (1984).

Cited in McMahan v. McMahan, ---N.C.App.---, 315 S.E.2d 536 (1984).

A proceeding under this chapter is a civil proceeding as in actions for alimony without divorce. Brondum v. Cox, 30 N.C.App. 35, 226 S.E.2d 193 (1976), aff'd 292 N.C. 192, 232 S.E.2d 687 (1977).

As to the history of the Uniform Act, see Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).

§ 52A-2. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

§ 52A-3. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "COURT" means any court of record in this State having jurisdiction to determine liability of persons for the support of dependents in any criminal proceeding, and when the context requires, means the court of any other State as defined in substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(4) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(5) "LAW" includes both common and statute law.

(6 "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "PROSECUTING ATTORNEY" means the District Attorney in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "REGISTER" means to record and file in the Registry of Foreign Support Orders.

(10) REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(11) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(13) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the provinces of Canada in which reciprocity can be effected by administrative action, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 1; ch. 1035, § 1; 1959, ch. 1123, § 1; 1975, ch. 656, § 1.)

§ 52A-4. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

Cases

Applied in County of Stanislaus v. Ross, 41 N.C.App. 518, 255 S.E.2d 229 (1979).

This chapter does not establish additional grounds for support. It provides additional means of enforcing support obligations. Blake v. Blake, 34 N.C.App. 160, 237 S.E.2d 310 (1977).

The doctrine of res judicata applies to civil actions brought under this chapter. Id.

§ 52A-5. Obligor Present in State Is Bound.

Duties of support arising under the law of this State when applicable under N.C.Gen.Stat. 52A-8, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 2; 1975, ch. 656, § 1.)

§ 52A-6. Interstate Rendition.

The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State, and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State.

The provisions of extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

Cases

Cited in Childers v. Childers, 19 N.C.App. 220, 198 S.E.2d 485 (1973).

§ 52A-7. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may request any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may request any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiating of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-8. What Duties Are Applicable.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period or any part of the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 4; 1975, ch. 656, § 1.)

Cases

Cited in Brondum v. Cox, 232 S.E.2d 687 (N.C., 1977).

This chapter does not establish additional grounds for support. It provides additional means of enforcing support obligations. Blake v. Blake, 237 S.E.2d 310 (N.C., 1977).

Parent's duty of support ceases when the child becomes of age--now 18 years old. Shaw v. Shaw, 25 N.C.App. 53, 212 S.E.2d 222 (1975).

As to cessation of parents' duty of support when child becomes of age, see Shaw v. Shaw, 212 S.E.2d 222 (N.C., 1975).

Stated in Childers v. Childers, 19 N.C.App. 220, 198 S.E.2d 485 (1973).

§ 52A-8.1. Remedies of a County Furnishing Support.

Whenever a county of this State furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement for such support and of obtaining continuing support and the term "obligee" as used in this section shall apply to children owing the duty of support to their parents.

HISTORY: (1959, ch. 1123, § 4; 1975, ch. 656, § 1.)

Cases

Proper party to bring action.

When an obligee in another State makes an assignment of her rights under this chapter to a subdivision of that State, that subdivision is a proper party to bring an action in this State. Frederick County ex rel. Ridgway v. Skinner, 48 N.C.App. 621, 269 S.E.2d 678 (1980).

§ 52A-8.2. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated. Nothing in this section shall be construed to deprive, amend or alter the right of the obligor defendant upon motion, to have ordered a blood-grouping test as provided by N.C.Gen.Stat. 8-50.1.

HISTORY: (1975, ch. 656, § 1.)

Cases

As to effect of foreign adjudication of paternity, see Brondum v. Cox, 232 S.E.2d 687 (N.C., 1977).

In an action under this chapter, paternity must be judicially determined to warrant relief. Smith v. Burden, 228 S.E.2d 662 (N.C., 1976).

Prior criminal conviction of failure to support illegitimate children is not conclusive as to paternity in a subsequent civil action for support of the same children. In the subsequent civil action, the putative father is entitled to have the issue of paternity litigated. Id.

§ 52A-9. How Duties of Support Are Enforced.

All duties of support including the duty to pay arrearages are enforceable by action irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in any court of record in this State having jurisdiction to determine liability of persons for the support of dependents in any criminal proceeding.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 5; ch. 1035, § 2 1/2; 1959, ch. 1123, § 2; 1975, ch. 656, § 1.)

Cases

In general.

The legislature did not intend to limit the effect of this statute to obligors residing in this State. Rather, the legislature intended to extend the obligations of an obligee

without the suit for domestication of a foreign judgment when proper jurisdiction is present. Stevens v. Stevens, 314 S.E.2d 786 (N.C., 1984).

Because the State has an interest in the welfare and support of those persons living within its boundaries, the statute is broad in granting authority to the official who prosecutes criminal actions for the State to appear on behalf of the obligee, although the action may also be brought by another. Id.

The District Court has exclusive original jurisdiction to entertain a proceeding pursuant to the Uniform Reciprocal Enforcement of Support Act. Cline v. Cline, 6 N.C.App. 523, 170 S.E.2d 645 (1969).

Jurisdiction of parties.

The Uniform Reciprocal Enforcement of Support Act applies only where the obligee is present in the initiating State and the obligor is subject to the jurisdiction of the responding State. Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).

In a proceeding under the Uniform Reciprocal Enforcement of Support Act, the court of the initiating State, by approval of the petition and the certification of the documents, enables petitioner to submit herself to the jurisdiction of responding State without the necessity of personal presence or employment of counsel, and the responding State acquires jurisdiction of the respondent through service of summons and notice. Id.

Where obligee has removed to a third State at time of hearing.

Where, after filing petition under the Uniform Reciprocal Enforcement of Support Act of the initiating State, the obligee moves to another State and is a resident of such third State at the time of the hearing in North Carolina, the responding State, the North Carolina court has no jurisdiction to make an award for transmittal to the initiating State for transmittal in turn to the petitioner in the third State, and judgment of nonsuit and dismissal should have been entered in the North Carolina court upon motion. Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).

Children as real parties in interest.

Under this chapter as it stood before the enactment of § 52A.10.2, it was held that a petitioner, who was divorced from defendant in Arkansas, could not maintain an action for support of their children against defendant in North Carolina though action was initiated in Arkansas, since children, the real parties in interest, were not represented by either their guardian or by duly appointed next friend, as required by former § 1.64 (now § 1A.1, Rule 17). This result was not affected by a provision of the law of Arkansas that a petition might be brought in behalf of a minor obligee without appointment of guardian or next friend, since the rights of the parties are determinable in the court having jurisdiction of respondent, and the cause here must be so constituted as to conform to North Carolina law. Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).

As to filing complaint on behalf of minor obligee without appointment of guardian ad litem, see now § 52A-10.2.

Jurisdiction to determine issue of paternity.

Since the District Court has exclusive original jurisdiction to entertain a proceeding under the Uniform Reciprocal Enforcement of Support Act, it is clear that the District

Court has jurisdiction to determine the issue of paternity in such a case. Amaker v. Amaker, 28 N.C.App. 558, 221 S.E.2d 917 (1976).

§ 52A-9.1. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process, or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in amount set by the court to assure his appearance at the hearing.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-10. Contents of Complaint for Support.

Actions hereunder shall be commenced by the issuance of summons in the form required for actions for alimony without divorce by the court having jurisdiction. The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 6; 1975, ch. 656, § 1.)

Cases

Where complaint contained the name, address and circumstances of the defendant, as well as allegations that the plaintiff was entitled to child support payments from the defendant, it was not made defective by its failure to contain the name of the defendant's employer or the amount of the defendant's earnings. County of Stanislus v. Ross, 255 S.E.2d 229 (N.C., 1979).

§ 52A-10.1. Official To Represent Obligee; Responding.

It shall be the duty of the official who prosecutes criminal actions for the State in the court acquiring jurisdiction to appear on behalf of the obligee in proceedings under this chapter. In the event of an appeal from a support order entered under this chapter, the Attorney General shall represent the obligee.

HISTORY: (1955, ch. 699, § 6; 1959, ch. 1123, § 3; 1975, ch. 656, § 1.)

Cases

Statutory appointment of the "official who prosecutes criminal actions for the State" to represent the obligee in proceedings under this chapter is not just an empty formality, but is designed to guarantee to the complainant effective assistance of counsel in this State. Thelen v. Thelen, 281 S.E.2d 737 (N.C., 1981).

What constitutes proper representation of the obligee by attorney appointed under this section cannot be defined by rigid rules, but must be determined by the circumstances and necessities of each case. Id.

Applied in Pifer v. Pifer, 229 S.E.2d 700 (N.C., 1976).

§ 52A-10.2. Complaint on Behalf of Minor.

A complaint on behalf of a minor obligee may be filed by a person having legal or physical custody of the minor without appointment as guardian ad litem. In addition, notwithstanding any other provisions of the law, when a court of this State, acting as a responding State, receives from the court of an initiating State a complaint on behalf of a minor obligee brought by a person having legal custody of the minor, the court may proceed to a hearing of the cause without the appointment of a guardian ad litem.

HISTORY: (1955, ch. 699, § 6; 1975, ch. 656, § 1.)

§ 52A-10.3. Official To Represent Plaintiff; Initiating.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court (in the case of a person or member of a family receiving public assistance, at the request to the court by the county Director of Social Services) shall represent the plaintiff in any proceeding under this chapter. The county Director of Social Services in making such a request will provide written verification of the indigency of the person and the fact that the person or the family is receiving public assistance. In counties where the services of a special county attorney are available for social services matters as set out in N.C.Gen.Stat. 108A.16 through 108A.18, such special county attorney, instead of the prosecuting attorney, shall represent the obligee, the county or the plaintiff in any proceeding under this chapter when the county has a right to invoke the provisions of this chapter under N.C.Gen.Stat. 52A.8.1.

HISTORY: (1975, ch. 655, § 1; 1985, ch. 689, § 24.)

§ 52A-11. Duty of Initiating Court.

If the initiating court finds that the defendant is not to be found in this State, that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support, and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (i) the complaint, (ii) its certificate, (iii) any other document filed with the court, and (iv) one copy of this chapter to be transmitted to the court or other designated agency in the responding State.

If the name and address of such court is unknown and the responding State has an information agency, the court of this State shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of this State. Unless the Chief District Court Judge shall otherwise direct, the authority and duties of this section shall be the responsibility of the clerk of superior court.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 7; ch. 1035, § 2; 1975, ch. 656, § 1.)

Cases

This section does not require the initiating court to issue a summons. Frederick County ex rel. Ridgway v. Skinner, 269 S.E.2d 678 (N.C., 1980).

§ 52A-11.1. Fees and Costs.

A responding court of this State may in its discretion direct that any part of all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, and seizure of property, shall be paid by the county, but when an order of support is entered against a defendant, he shall be taxed with the costs. These costs or fees do not have priority over amounts due to the obligee. In addition, any and all appellate costs taxed to the plaintiff or the State shall be waived when the plaintiff has been certified as an indigent by the initiating court.

The clerk of the initiating court may upon written verification by the County Director of Social Services of the indigency of the plaintiff, waive all fees and costs incurred in filing a complaint hereunder or may waive such fees and costs solely upon a finding of indigency by the court.

HISTORY: (1955, ch. 699, § 7; ch. 1035, § 2; 1961, ch. 186; 1975, ch. 656, § 1.)

§ 52A-12. Duty of the Court of this State as Responding State.

When the court of this State, acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall

(1) Docket the case,

(2) Notify the prosecuting attorney as described in N.C.Gen.Stat. 52A-10.1,

(3) Set a time and a place for a hearing, and

(4) Take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

The procedure for serving notice and summons on the defendant under this chapter shall be the same as in actions for alimony as provided by N.C.Gen.Stat. 50.16.8.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 8; 1975, ch. 656, § 1.)

Cases

In general.

Actions under this chapter are decided under same law as actions for alimony without divorce. Blake v. Blake, 34 N.C.App.160, 237 S.E.2d 310 (1977).

The doctrine of res judicata applies to civil actions brought under this chapter. Id.

An action for support of illegitimate children under this chapter is a civil action. Smith v. Burden, 31 N.C.App. 145, 228 S.E.2d 662 (1976).

Right of defendant to blood grouping test and jury trial on issue of paternity.

A defendant is entitled in a proceeding under the Uniform Reciprocal Enforcement of Support Act to a blood grouping test pursuant to § 8.50.1 where the issue of paternity is raised, and upon timely motion, is entitled to have the jury pass on the issue of paternity. Brondum v. Cox, 30 N.C.App. 35, 226 S.E.2d 193 (1976), aff'd, 292 N.C. 192, 232 S.E.2d 687 (1977).

Past due support installments.

A decree for the future payments of alimony or child support is, as to installments past due and unpaid, within the protection of the full faith and credit clause of the United States Constitution, unless by the law of the State in which the decree was rendered its enforcement is so completely within the discretion of the courts in that State that they may annul or modify the decree as to overdue and unsatisfied installments. Fleming v. Fleming, 49 N.C.App. 345, 271 S.E.2d 584 (1980).

A proceeding under this chapter is a civil proceeding as in actions for alimony without divorce. Cline v. Cline, 6 N.C.App. 523, 170 S.E.2d 645 (1969); Childers v. Childers, 19 N.C.App. 220, 198 S.E.2d 485 (1973).

Chapter creates no statutory offense.

While a trial court of a "responding State" may punish a respondent for noncompliance with its orders, and while certain provisions of this chapter provide for the interstate rendition of persons charged in other States with the crime of nonsupport, no statutory offense is created by this chapter, and it was error for the trial court to treat it as such given the civil nature of the proceeding. Childers v. Childers, 19 N.C.App. 220, 198 S.E.2d 485 (1973).

Responding State determines substantive rights of parties.

Under this chapter the initiating State has no jurisdiction to make any determination affecting the substantive rights of the parties, and therefore, a conclusion by a court of North Carolina, the responding State that the duty of respondent to support the children in question had already been found to exist by a court of competent jurisdiction of the initiating State, was erroneous. Mahan v. Read, 240 N.C. 641, 83 S.E.2d 706 (1954).

§ 52A-12.1. Further Duties of Court and Officials in the Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney may request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents by forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1955, ch. 699, § 8; 1975, ch. 656, § 1.)

§ 52A-12.2. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the complaint or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-13. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (1951, ch. 317; 1975, § 656, § 1.)

Cases

The judge in the responding State of North Carolina had jurisdiction only to determine whether defendant owed a duty of support to his children in the initiating State of Florida, and to enter an order requiring defendant to furnish such support. Pifer v. Pifer, 229 S.E.2d 700 (N.C., 1976).

The judge in the responding State has no jurisdiction whatsoever to condition support payments upon certain visitation privileges for defendant with his children in the responding or initiating State. Id.

The judge in the responding State has no authority to permit a discontinuance of the support payments upon a finding by him of an alleged violation of the condition of visitation privileges. Pifer v. Pifer, 31 N.C.App. 486, 229 S.E.2d 700 (1976).

§ 52A-14. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

§ 52A-15. Additional Powers of Court.

In addition to the foregoing powers, the responding court has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(2) To require the defendant to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 9; 1975, ch. 656, § 1.)

Cases

Findings required for order incarcerating person until he complies with support order.

An order, entered pursuant to a contempt hearing, which confines a person to jail until he complies with a support order, must find not only that his failure to comply with the support order was willful, but also that he presently possesses the means to comply with the order. Ingle v. Ingle, 18 N.C.App. 455, 197 S.E.2d 61 (1973).

Cited in Childers v. Childers, 19 N.C.App. 220, 198 S.E.2d 485 (1973).

§ 52A-16. Additional Duties of the Court of this State When Acting as a Responding Court.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(1) Upon receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the initiating court; and

(2) Upon request to furnish to the initiating court a certified statement of all payments made by the defendant.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

§ 52A-17. Additional Duty of the Initiating Court of this State.

The initiating court shall have the duty which may be carried out through the clerk of court to receive and disburse forthwith all payments made by the defendant or transmitted by the responding court.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

§ 52A-18. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (1951, ch. 317; 1975, ch. 656, § 1.)

§ 52A-19. Rules of Evidence.

In any hearing under this law wherein the defendant has been served with notice and summons as herein provided, the verified complaint of the plaintiff shall be admissible as prima facie evidence of the facts therein stated in any court of this State having jurisdiction to conduct hearings pursuant to this chapter. In those cases where the defendant fails to appear after service of notice and summons, the court may enter a reasonable order for support. Upon proper motion of the defendant, the reasonableness of the order may be reconsidered by the court and upon a showing by the defendant that the order is not within his financial ability to pay, is beyond his earning capacity, or for other good cause shown, such order shall be subject to modification from time to time. The order fixed by the court shall also be subject to modification from time to time upon motion of the plaintiff.

HISTORY: (1951, ch. 317; 1955, ch. 699, § 10; 1975, ch. 656, § 1.)

Cases

Applied in Barringer v. Barringer, 24 N.C.App. 142, 210 S.E.2d 90 (1974).

§ 52A-20. Proceedings Not To Be Stayed.

A responding court may or may not stay the proceedings or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court may hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the

complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-21. Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1975, ch. 656, § 1.)

Cases

Intent as to changed circumstances.

The legislature apparently intended that enactment of this section would provide authority to the courts of this State to apply the Uniform Reciprocal Enforcement of Support Act so as to provide for the support of a minor chid independent of and without regard for any other support judgments or whether there had been a change of circumstances of either the child or its parents; therefore, it is not necessary that the complaint for child support contain allegations of facts constituting changed circumstances. County of Stanislaus v. Ross, 41 N.C.App. 518, 255 S.E.2d 229 (1979).

§ 52A-22. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1975, ch. 656, § 1.)

Cases

This section should make it clear that the obligor may raise the defense of lack of jurisdiction over his person or property at any proceeding on enforcement. Pinner v. Pinner, 33 N.C.App. 204, 234 S.E.2d 633 (1977).

§ 52A-23. Intrastate Application.

This chapter applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain

jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings and any other document filed with the court to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State. In all intrastate proceedings provisions of this chapter stated to be applicable to an initiating State and a responding State are applicable respectively to an initiating county and a responding county.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-24. State Information Agency.

The State Division of Social Services is designated as the State Information Agency under this chapter. It shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property complaints, petitions, certificates and copies of the act it receives from courts or information agencies of other States.

If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

To assist in locating parents who have deserted their children and other persons liable for support of dependents, the Division of Social Services may request and shall receive information from the records of all departments, boards, bureaus or other agencies of this State and the same are authorized and directed to provide such information as is necessary for this purpose. Only information directly bearing on the identity and whereabouts of a person owing or asserted to be owing an obligation of support shall be requested and used or transmitted by the Division of Social Services pursuant to the authority conferred by this chapter. The Division of Social Services shall make such information available to public officials and agencies of this State, other States and the political subdivisions of this State and other States seeking to locate parents who have deserted their children and other persons liable for support of dependents for the purpose of enforcing their liability for support.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-25. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-26. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (1975, ch. 656, § 1.)

Cases

Jurisdiction over the person or property of the obligor is unnecessary for registration of a foreign support order. Pinner v. Pinner, 33 N.C.App. 204, 234 S.E.2d 633 (1977).

§ 52A-27. Registry of Foreign Support Orders.

The clerk of superior court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-28. The Official.

If this State is acting either as a rendering or a registering State the representation of the obligee in proceedings under this chapter shall be the same as is set out in N.C.Gen.Stat. 52A.-10.1 and 52A.-10.3.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-29. Registration Procedure; Notice.

An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (i) three certified copies of the order with all modifications thereof, (ii) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (iii) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents, the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

Promptly upon registration, the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy

of the registered support order, and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action.

HISTORY: (1975, ch. 656, § 1.)

Cases

In general.

Personal jurisdiction is not a requisite for registration of an order under this section. Stevens v. Stevens, 314 S.E.2d 786 (N.C., 1984).

Registration and enforcement are entirely separate procedures under this chapter. Fleming v. Fleming, 271 S.E.2d 584 (N.C., 1980).

Personal jurisdiction is unnecessary for mere registration of a foreign support order under this section, and language in a confirmation order purporting to find personal jurisdiction is superfluous and does not bind the defendant therein in subsequent enforcement procedures. Id.

The mere registration of a foreign support order presented by the obligee under this section is a ministerial duty of the clerk. By that act no court or agency of the State is purporting to exercise power over the obligor or his property. Pinner v. Pinner, 234 S.E.2d 633 (N.C., 1977).

As is transfer of order to this State.

The registration provisions of this chapter apply so as to allow enforcement in this State of foreign State support orders entered prior to October 1, 1975; transfer of an order to this State was a ministerial act ancillary to the entry of original judgment. Stevens v. Stevens, 314 S.E.2d 786 (N.C., 1984).

Registration under this section does not prejudice any rights of the obligor; it merely changes the status of the foreign support order by allowing it to be treated the same as a support order issued by a court of North Carolina under § 52A.-30. Pinner v. Pinner, 234 S.E.2d 633 (N.C., 1977).

§ 52A-30. Effect of Registration; Enforcement Procedure.

(a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(c) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is

vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1975, ch. 656, § 1.)

Cases

Personal jurisdiction is not a requisite for registration of an order under § 52A-29. Stevens v. Stevens, 314 S.E.2d 786 (N.C., 1984).

The registration provisions of this chapter apply so as to allow enforcement in this State of foreign State support orders entered prior to October 1, 1975; transfer of an order to this State was a ministerial act ancillary to the entry of original judgment. Id.

Registration and enforcement are entirely separate procedures under this chapter. Fleming v. Fleming, 271 S.E.2d 584 (N.C., 1980).

He may defeat recovery by showing want of jurisdiction either as to the subject matter or as to his person; however, jurisdiction will be presumed until the contrary is shown. Id.

This section establishes a two-step procedure: (1) registration of the order, and if required, a hearing on whether to vacate the registration or grant the "obligor" other relief; and (2) enforcement of the order. Pinner v. Pinner, 234 S.E.2d 633 (N.C., 1977).

Once foreign support order is treated as a support order issued by a North Carolina court, the obligee or obligor may request modifications in the order, and when the obligee attempts to enforce the order, the court must determine whether jurisdiction exists over the person or property of the obligor and what amount, if any, is in arrears. Id.

§ 52A-31. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: (1975, ch. 656, § 1.)

§ 52A-32. Interpretation of Chapter.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States having a substantially similar act.

HISTORY: (1955, ch. 699, § 12; 1975, ch. 656, § 1.)

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Part I: General Provisions

§ 14-12.1-01. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (S.L. 1969, ch. 153, § 1.)

Cases

Purpose of chapter.

Primary purpose of chapter is to facilitate an effective and supplemental method of determining and collecting support for minor children of divorced parents. Craft v. Hertz (1970) 182 N.W.2d 293, distinguished in 196 N.W.2d 80.

§ 14-12.1-02. Definitions.

1. "COURT" means the District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

2. "DUTY OF SUPPORT" means a duty of support whether imposed or impossible by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid, said duty of support subject to modification under the provisions of this chapter upon a showing of material change in circumstances.

3. "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

4. "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

5. "LAW" includes both common and statutory law.

6. "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

7. "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

8. "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

9. "REGISTER" means to file in the Registry of Foreign Support Orders.

10. "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

11. "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

12. "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

13. "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

14. "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (S.L. 1969, ch. 153, § 2; 1979, ch. 197, § 1.)

Cases

Support order.

Arizona divorce decree providing for monthly child support payments and custody in wife was a "support order" within subsection 14. Craft v. Hertz (1970) 182 N.W.2d 293.

§ 14-12.1-03. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (S.L. 1969, ch. 153, § 3.)

§ 14-12.1-04. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 14-12.1-07, bind the obligor present in this State regardless of the presence of residence of the obligee.

HISTORY: (S.L. 1969, ch. 153, § 4.)

Part II: Criminal Enforcement

§ 14-12.1-05 Interstate Rendition.

The Governor of this State may:

1. Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

2. Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (S.L. 1969, ch. 153, § 5.)

§ 14-12.1-06. Conditions of Interstate Rendition.

1. Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

2. If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

3. If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (S.L. 1969, ch. 153, § 6.)

Part III: Civil Enforcement

§ 14-12.1-07. Choice of Law.

Duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought.

The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (S.L. 1969, ch. 153, § 7.)

Cases

Duties of responding State.

North Dakota, as responding State, had no jurisdiction to modify Arizona divorce decree; enforcement provisions of part 3 of this chapter require North Dakota to give full credit to a foreign decree; the responding State had no alternative but to find a duty of the obligor to furnish support in the amount provided by the foreign decree. Craft v. Hertz (1970) 182 N.W.2d 293.

§ 14-12.1-08. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (S.L. 1969, ch. 153, § 8.)

Cases

Reservation Indians.

Proceedings which were initiated by the county Welfare Department under a right derived from a reservation Indian mother were within the jurisdiction of the court, since Indians have the right to sue non-Indians in a State court. Rolette County v. Eltobgi (1974) 221 N.W.2d 645.

§ 14-12.1-09. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (S.L. 1969, ch. 153, § 9.)

§ 14-12.1-10. Jurisdiction.

Jurisdiction of any proceeding under this chapter is vested in the District Court.

HISTORY: (S.L. 1969, ch. 153, § 10.)

§ 14-12.1-11. Contents and Filing of Petition for Support; Venue.

1. The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

2. The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (S.L. 1969, ch. 153, § 11.)

§ 14-12.1-12. Officials To Represent Obligee.

If this State is acting as an initiating State, the prosecuting attorney upon the request of the court, the Executive Director of the Department of Human Services, a county commissioner, or the director of a county social service board, shall represent the obligee in any proceeding under this chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

HISTORY: (S.L. 1969, ch. 153, § 12.)

§ 14-12.1-13. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (S.L. 1969, ch. 153, § 13.)

§ 14-12.1-14. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency, or other proper official of the responding State, with a request that the agency or official

forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (S.L. 1969, ch. 153, § 14.)

§ 14-12.1-15. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or a county thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (S.L. 1969, ch. 153, § 15.)

§ 14-12.1-16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may:

1. As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

2. As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (S.L. 1969, ch. 153, § 16.)

§ 14-12.1-17. State Information Agency.

1. The Department of Human Services is designated as the State Information Agency under this chapter. It shall:

a. Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislative assembly the agency shall distribute copies of any amendments to this chapter and a statement of their effective dates to all other State Information Agencies.

b. Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter.

c. Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the act it receives from courts or information agencies of other States.

2. If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle licenses offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act as amended.

3. After the deposit of three copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the Attorney General who may undertake the representation.

HISTORY: (S.L. 1969, ch. 153, § 17.)

§ 14-12.1-18. Duty of the Court and Officials of this State as Responding State.

1. After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

2. The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

3. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (S.L. 1969, ch. 153, § 18.)

§ 14-12.1-19. Further Duties of Court and Officials in the Responding State.

1. The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

2. If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

3. If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (S.L. 1969, ch. 153, § 19.)

§ 14-12.1-20. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (S.L. 1969, ch. 153, § 20.)

Cases

Continuance.

Trial court was within its discretion in denying obligor's motion for second continuance on grounds that interrogatories which had been served upon the petitioner had not been answered and that a further continuance would have permitted the court in a divorce action to determine the question of custody and support. Buchmann v. Buchmann (1972) 196 N.W.2d 80.

In appeal from determination of support payments, where neither party requested the court to continue the hearing in order to secure evidence by any discovery procedure or by appearing personally, the father, who did not request a continuance to offer further evidence regarding the alleged termination of his visitation rights, could not be heard to complain of the court's failure to grant a continuance. Craft v. Hertz (1970) 182 N.W.2d 293.

Duty to support.

Father may not set up denial of visitation by another obligee as a defense to his duty to the support of his children by his first marriage. Craft v. Hertz (1970) 182 N.W.2d 293.

§ 14-12.1-21. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (S.L. 1969, ch. 153, § 21.)

§ 14-12.1-22. Evidence of Husband and Wife.

Superseded by N.D.R.Ev., Rule 501.

§ 14-12.1-23. Rules of Evidence.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (§ 14-12.1-27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by an interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (S.L. 1969, ch. 153, § 23.)

Cases

Sufficiency of evidence.

Evidence was sufficient to justify support order issued by court in Spokane under Washington Uniform Reciprocal Enforcement of Support Act where obligor admitted that he was legally married to the petitioner, that he was the father of the three children for whom support was being sought, and that he was employed at a strip mine in Zap, with an income sufficient to enable him to contribute to the support of the children. Buchmann v. Buchmann (1972) 196 N.W.2d 80.

Visitation rights.

Denial of visitation rights by former wife did not justify husband's suspension of child support payments. Craft v. Hertz (1970) 182 N.W.2d 293.

§ 14-12.1-24. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor in accordance with the present needs and circumstances of the obligee and the present ability of the obligor to pay and subject the property of the obligor to the order. The court, upon a finding of a material change in circumstances relative to the obligor's discharge of obligations under any existing order for child support or decree of divorce, may modify the order for child support or alimony combined with child support, and order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (S.L. 1969, ch. 153, § 24; 1979, ch. 197, § 2.)

Cases

In general.

While parent's obligations to support others may be considered by a court in determining the amount to be paid by that parent for support of a child, such obligations cannot be used as a legal excuse by that parent to escape from his coexistent obligation to support his child. State of Minnesota, County of Clay, On Behalf of Licha v. Doty, 326 N.W.2d 74 (N.D., 1982).

Finding that obligor's monthly income was more than accounted for in providing for his current wife and resident children did not require the conclusion that obligor did not have the present ability to provide support for his nonresident child born before his current marriage, especially since the obligor was making payments on several nonessential items such as a television, washer and dryer, wedding rings, and cars, and where he was aware of the nonresident child before taking on the additional financial burden created by his current marriage and birth of his resident children. Id.

As used in this section, "present needs and circumstances of the obligee" refers to the parent and child to whom a duty of support is owed, whether or not the petitioner in the Revised Uniform Reciprocal Enforcement of Support Act proceeding is the actual person to whom a duty of support is owed, or a State or political subdivision which has expended benefits for the child's welfare and has been assigned that person's right to support. Id.

An initiating court's certification of a reciprocal enforcement of support act petition, which sets forth the needs of the child and the amount of that need, is to be considered prima facie evidence in the courts of North Dakota of the present needs and circumstances of the obligee; however, the initiating court's certification of need is not necessarily conclusive on the courts of this State and the obligor may introduce evidence to rebutt an initiating court's certification of need. Id.

Appeal.

District Court's determination on matter of child support is a finding of fact and will not be set aside on appeal to supreme court unless it is clearly erroneous; District Court's determination that father did not have financial ability to make at least nominal monthly child support payments was clearly erroneous and reversed on appeal where evidence was father had monthly take home income of $800 and monthly expense of $709, including a $177 monthly payment on a new van. State of Oregon ex rel. Krueger v. Krueger (1980) 292 N.W.2d 60.

§ 14-12.1-25. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (S.L. 1969, ch. 153, § 25.)

§ 14-12.1-26. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its order and in particular to:

1. Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

2. Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

3. Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (S.L. 1969, ch. 153, § 26.)

§ 14-12.1-27. _Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (S.L. 1969, ch. 153, § 27.)

§ 14-12.1-28. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

1. To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise.

2. To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (S.L. 1969, ch. 153, § 28.)

§ 14-12.1-29. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (S.L. 1969, ch. 153, § 29.)

§ 14-12.1-30. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendent litem. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending

proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention or jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (S.L. 1969, ch. 153, § 30.)

Cases

Continuance.

Trial court did not abuse its discretion in denying continuance sought on ground that the problem of custody and support might have been solved in a separate divorce action. Buchmann v. Buchmann (1972) 196 N.W.2d 80.

§ 14-12.1-31. Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance or variation in amounts ordered to be paid, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State or by a court of this State pursuant to any other law shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State under this chapter.

HISTORY: (S.L. 1969, ch. 153, § 31; 1979, ch. 197, § 3.)

§ 14.12.2-32. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (S.L. 1969, ch. 153, § 32.)

Cases

Jurisdiction.

Bringing of action under this chapter to enforce Arizona child support order did not confer on North Dakota court, as responding court, jurisdiction to modify the support order. Craft v. Hertz (1970) 182 N.W.2d 293.

§ 14-12.1-33. Interstate Application.

This chapter applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of

support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (S.L. 1969, ch. 153, § 33.)

§ 14-12.1-34. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

1. Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

2. If the support order was issued in another State, cause the appeal to be taken in the other State.

In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (S.L. 1969, ch. 153, § 34.)

Part IV: Registration of Foreign Support Orders

§ 14-12.1-35. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (S.L. 1969, ch. 153, § 35.)

§ 14-12.1-36 Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (S.L. 1969, ch. 153, § 36.)

§ 14-12.1-37. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (S.L. 1969, ch. 153, § 37.)

§ 14-12.1-38. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, the executive director of the Department of Human Services, a county commissioner, or the director of a county social service board shall represent the obligee in proceedings under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may undertake the representation.

HISTORY: (S.L. 1969, ch. 153, § 38.)

§ 14-12.1-39. Registration Procedure; Notice.

1. An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court

(a) Three certified copies of the order with all modifications thereof,

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made, and

(c) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

2. Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (S.L. 1969, ch. 153, § 39.)

§ 14-12.1-40. Effect of Registration; Enforcement Procedure.

1. Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

2. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

3. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of

the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (S.L. 1969, ch. 153, § 40.)

§ 14-12.1-41. Uniformity of Interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (S.L. 1969, ch. 153, § 41.)

§ 14-12.1-42. Short Title.

This chapter may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

HISTORY: (S.L. 1969, ch. 153, § 42.)

§ 14-12.1-43. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: (S.L. 1969, ch. 153, § 43.)

OHIO
OHIO REV. CODE ANN. §§ 3115.01 to 3115.34

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OHIO

OHIO REV. CODE ANN. §§ 3115.01 to 3115.34

§ 3115.01. Purposes; Definitions.

(A) The purposes of §§ 3115.01 to 3115.34, inclusive, of the Revised Code, are to improve and extend by reciprocal legislation the enforcement of duties of support.

(B) As used in §§ 3115.01 to 3115.34, inclusive, of the Revised Code:

(1) "STATE" includes any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means any trial court of record of this State and when the context requires, the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" means both common and statute law.

(6) "DUTY OF SUPPORT" means any duty of support imposed or imposable by law, or by order, decree, or judgment of any court, whether interlocutory or final, and whether incidental to a proceeding for divorce, legal separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(7) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of this or any State covered by a substantially similar reciprocal law.

(8) "INITIATING COURT" means the court in which a proceeding is commenced.

(9) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(10) "OBLIGEE" means any person, including a State or political subdivision, to whom a duty of support is owed or a person, including a State or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(11) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(12) "REGISTER" means to file in the Registry of Foreign Support Orders.

(13) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(14) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(15) "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(16) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee, whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (G.C. § 8007.2; 124 v 112; 126 v 560, eff. 10-5-55; 134 v H 504, eff. 10-27-71.)

Cases

After consolidation of a URESA action and the prior local divorce action the trial court may not, purportedly pursuant to its continuing jurisdiction under CivR75(I), modify a party's child support obligation where the other party to the divorce action was not served with notice of the motion for modification and had no opportunity to protect her interests in such modification proceeding. Rondy v. Rondy, 468 N.E.2d 81 (Ohio, 1983).

In a proceeding, initiated in Pennsylvania and certified to Ohio under the provisions of the "Uniform Dependent's Act" (Act No. 50, 1951, of the General Assembly of Pennsylvania; G.C. §§ 8007.1 to 8007.19, Revised Code §§ 3115.01 to 3115.15) to require a son, who is a citizen and resident of Ohio, to contribute to the support of his father, who is a resident of Pennsylvania, the courts of Ohio will determine the liability of such son for such support in accordance with the law of Ohio and, in so doing, will accord to such son any benefit of G.C. § 12431 (Revised Code § 2901.42), to which he may be entitled. Pennsylvania ex rel Public Assistance Dept. v. Mong, 160 O.S. 455, 52 O.O. 340, 117 N.E.2d 32.

Similar act held constitutional in Kentucky. Duncan v. Smith (Ky), 262 SW (2d) 373, 42 ALR (2d) 754.

A petition in an action to enforce a duty of support filed in this State by a court of a sister State, which State has adopted the uniform support act, and which petition complies with the requirements of that act in requesting that a Common Pleas Court of this State make an order for support of a wife alleged to have been abandoned in Pennsylvania by her husband, who is now a resident of Ohio, states a good cause of action; and such petition may be tried under the terms of the Ohio support of dependents act, Revised Code § 3115. Pennsylvania ex rel Stobie v. Stobie, 3 O.App.2d 18, 32 O.O.2d 79, 209 N.E.2d 457.

An action, instituted under the provisions of ch. 3115, to enforce duties of support, is a civil action. Robinson v. Robinson, 8 O.App.2d 235, 37 O.O.2d 218, 221 N.E.2d 598.

The doctrine of res judicata can never be a valid defense in an action for the support of minor children filed against a parent legally liable to provide that support. Id.

The Division of Domestic Relations of the Common Pleas Court is a court of record, with jurisdiction, under the provisions of the Support of Dependents Act, to entertain an action to enforce duties of support. Id.

A resident defendant may not be required to support a child born to one not his wife, under the Uniform Support of Dependents Act, where there has been no prior judicial determination of the paternity of the child. Smith v. Smith, 40 O.O.2d 136, 11 O.Misc. 5, 224 N.E.2d 925 (CP).

Determining the age at which a person becomes an adult for the purpose of enforcing the provisions of the reciprocal support act depends upon the State in which the child is living and the State in which the father is living, and not on the State in which the original divorce was granted. So in this case, where the divorce was granted in Kentucky, and the law of Kentucky states that a child becomes an adult at the age of eighteen years, which is different from the law in the State of Florida where the child lives, and the law of Ohio, where the father lives, the age of maturity is twenty-one years, and irrespective of the State in which the divorce was granted, the father is still liable for support until the child is twenty-one years of age. Burney v. Vance, 46 O.O.2d 427, 17 O.Misc. 307, 246 N.E.2d 371 (CP).

A father is primarily responsible for the support of his minor children and that support continues under the law of Ohio, until the child is twenty-one years of age or is otherwise emancipated. Id.

Uniform Support Act is civil in its nature and is not governed by any criminal law. Id.

The legal right to reimbursement for money expended for support by one who has made such expenditures for the support of one entitled by law to support, comes within the definition of duty of support imposed by law within the meaning of Revised Code § 3115.01, Support of Dependent's Act, when read in the light of the other provisions of the act. Skinner v. Fasciano, 75 OLA 409, 137 N.E.2d 613 (App.).

The purpose of the support of dependent's act is to enforce the civil liability against one who is in default of his obligation of support imposed by law and who has left the jurisdiction of the State where those who are entitled to the support reside, thereby obviating the necessity of subjecting the one charged with default of such support of being arrested and extradited to the jurisdiction of the default under the criminal law. Id.

The Support of Dependents Act must be liberally construed. Id.

A wife is entitled to reimbursement under the support of dependent's act for funds expended for the support of herself and the minor child of the parties between the time defendant husband abandoned his family and the date of the trial of the action, maintained under authority of such act, seeking reimbursement and continuing support. Id.

Where Ohio is the initiating State in a proceeding under Revised Code § 3115.01 et seq., the court may, pursuant to Revised Code § 3115.05, appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee is taxed as costs; however, said chapter does not authorize the court to so appoint in proceedings under the chapter where Ohio is the responding State. 1961 OAG No. 2510.

The Uniform Reciprocal Enforcement of Support Act imposes upon a father, whose wife removes their children of tender ages from this to another State, the duty to support the children as delineated by the law of Ohio. Porter v. Porter, 25 O.S.2d 123, 54 O.O.2d 260, 267 N.E.2d 299.

§ 3115.02. Remedies Cumulative.

The remedies provided by §§ 3115.01 to 3115.34, inclusive, of the Revised Code, are in addition to, not in substitution for, any other remedies.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

It is the purpose of the support of dependent's act to give full protection to a petitioner who has been abandoned without support by one who by law owes the duty of support. Skinner v. Fasciano, 75 OLA 409, 137 N.E.2d 613 (App.).

§ 3115.03. Support Duties Binding on Obligors Present in State.

Duties of support imposed by the law of this State, when applicable under § 3115.06 of the Revised Code, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (G.C. §§ 8007.7, 8007.4; 124 v 112; 126 v 560, eff. 10-5-55; 134 v H 504, eff. 10-27-71.)

§ 3115.04 Extradition.

The Governor of this State may demand of the Governor of any other State the surrender of any person found in that State who is charged criminally in this State with failure to provide for the support of any person in this State or may surrender on demand by the Governor of any other State any person found in this State who is charged criminally in that State with the failure to provide for the support of any person. Notwithstanding § 2963.03 of the Revised Code, §§ 2963.01 to 2963.29, inclusive, and 107.04 of the Revised Code apply to the demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition, pursuant to this section, need state or show that the person whose surrender is demanded has fled from justice or was at the time of the commission of the crime in the demanding State.

HISTORY: (G.C. §§ 8007.5, 8007-6; 124 v 112; 134 v H 504, eff. 10-27-71.)

Cases

When no civil support action has been instituted in the State of Kansas, where plaintiff's wife and minor child reside, plaintiff cannot avoid extradition proceedings by the State of Kansas on a charge of child desertion by initiating a civil support action in Ohio. Sands v. Sands, 60 O.O. 181, 136 N.E.2d 747 (CP).

A person for whom an extradition requisition has been received by the Governor of Ohio, from a State which has enacted the uniform dependent's act, asking for the person's return to the demanding State for desertion or non-support, must be relieved of extradition under § 6 of the act, where such person submits to a court of record in this State and complies with the court's order of support. Such court cannot, however, obtain jurisdiction to make such order of support otherwise than in the manner designated in G.C. §§ 8007.10 to 8007.12 (Revised Code §§ 3115.06 to 3115.08) and where there has been no compliance with the provisions of these sections an obligor cannot be relieved of extradition by a mere offer to submit to the jurisdiction of the court of the responding State. 1953 OAG No. 3009.

§ 3115.05 Demand for Extradition; Investigation.

(A) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under §§ 3115.01 to 3115.34, inclusive, of the Revised Code or that any proceeding would be of no avail.

(B) If, under a substantially reciprocal law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(C) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

Where Ohio is the initiating State in a proceeding under Revised Code § 3115.01 et seq, the court may, pursuant to Revised Code § 3115.05, appoint the prosecuting attorney or other counsel to represent the plaintiff and fix the fee for such service, which fee is taxed as costs; however, said chapter does not authorize the court to so appoint in proceedings under the chapter where Ohio is the responding State. 1961 OAG No. 2510.

A prosecuting attorney may bring a civil action for separate maintenance and support in accordance with the procedure outlined in this section. 1970 OAG No. 70-050.

§ 3115.06. Which State Law Applicable; Presumption of Obligor's Presence.

Duties of support applicable under §§ 3115.01 to 3115.34, inclusive, of the Revised Code, are those imposed under the laws of any State where the obligor was present for the

period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.07. Reimbursement for Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under §§ 3115.01 to 3115.34, inclusive, of the Revised Code, as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (134 v H 504, eff. 10-27-71; this section was formerly numbered 3115.02 G.C. § 8007.8, 124 v 112, 126 v 560.)

Cases

The court of the initiating State must find under the Uniform Support of Dependents Act that the parent owes the duty of support of the child before certifying the petition to the responding State and the responding State, upon hearing, must also find that duty under the laws of the responding State. In re Duncan, 17 O.O.2d 21, 172 N.E.2d 478 (App.).

§ 3115.08. Enforcement of Support; Actions; Jurisdiction.

(A) All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under §§ 3115.01 to 3115.34, inclusive, of the Revised Code, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

(B) Jurisdiction of all proceedings under §§ 3115.01 to 3115.22, inclusive, of the Revised Code, is vested in any trial court of record.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

The Uniform Reciprocal Enforcement of Support Act, effective in North Carolina and Ohio, is a measure designed to afford a practical method, in addition to other remedies, to enforce the legal obligation to support a dependent or dependents by one who has left the State in which the dependents reside. Where an abandoned wife in North Carolina on behalf of herself and minor children initiates a proceeding in that State under such act to secure such support from her husband who resides in Ohio and is the father of the children, a preliminary hearing is held thereon and a transcript of the proceeding is certified to the appropriate court in Ohio where the husband and father personally appears and testifies, and the Ohio court makes a support order against him in substantial accordance with the provisions of the Ohio act and with which order he partially complies over a period of years, it is then too late for him, when cited for contempt by reason of his failure to make the ordered payments, and while he is delinquent, to challenge for the first time the constitutionality and validity of the act and the order made in the proceeding. Levi v. Levi, 170 O.S. 533, 11 O.O.2d 364, 166 N.E.2d 744.

§ 3115.09. Contents of Complaint; Where Complaint May Be Filed.

(A) The complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and shall state all other pertinent information.

The obligee may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration:

(1) A photograph of the defendant;

(2) A description of any distinguishing marks of his person;

(3) Other names and aliases by which he has been or is known;

(4) The name of his employer;

(5) His fingerprints;

(6) His Social Security number.

(B) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.10. Duties of County Prosecutor in Initiating State.

If this State is acting as an initiating State, the prosecuting attorney upon the request of the court shall represent the obligee in any proceeding under §§ 3115.01 to 3115.34, inclusive, of the Revised Code. If the prosecuting attorney neglects or refuses to represent the obligee, the county director of welfare may obtain other representation.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.11. Petition on Minor's Behalf.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.12. Certification of Complaint by Initiating Court; Transmission to Responding State.

If the initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and transmit to the responding court three certified copies of the complaint, the certificate, and an authenticated copy of §§ 3115.01 to 3115.34, inclusive, of the Revised Code. Certification shall be in accordance with the requirements of the initiating State.

If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established by § 3115.34 of the Revised Code, the initiating court shall transmit the copies to the State Information Agency, or other proper official, of the responding State, with a request that it forward them to the proper court and that such court acknowledge their receipt to the initiating court.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.13. Payment of Fees and Costs.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.14. Caplas for Absconding Obligor.

If the court of this State, has reason to believe that the obligor may flee the jurisdiction, it may:

(A) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process;

(B) As a responding State, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.15. Attorney General Designated as State Information Agency; Duties.

(A) The Attorney General is designated as the State Information Agency under §§ 3115.01 to 3115.34, inclusive, of the Revised Code, and it shall be his duty to:

(1) Compile a list of the courts of record in this State and their addresses and transmit a copy of such list to the State Information Agency of every other State which has adopted an act substantially similar to §§ 3115.01 to 3115.34, inclusive, of the Revised Code;

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court of record in this State;

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the uniform reciprocal enforcement of support acts it receives from courts or information agencies of other States.

(B) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the "Social Security Act," as amended.

(C) After the deposit of three copies of the complaint and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the appropriate county director of welfare who may undertake the representation.

HISTORY: (134 v H 504, eff. 10-27-71; this section was formerly numbered 3115.21 126 v 560.)

Cases

A child has a right enforceable in a court of law against one who has invaded and taken from said child the support and maintenance of its father, as well as damages for the destruction of other rights which arise out of the family relationship and which have been destroyed or defeated by a wrongdoing third party. Daily v. Parker, 152 F.2d 174, 32 O.O. 23. But see Kane v. Quigley, 1 O.S.2d 1, 30 O.O.2d 1, 203 N.E.2d 338, where it was held that a child has no action against a wrongdoer who induced plaintiff's father to abandon his family, thereby depriving plaintiff of his father's affection, companionship and guidance and causing plaintiff unwanted publicity and embarrassment.

A child acting through his mother as next friend, cannot maintain an action against third persons for wrongfully and maliciously disrupting the family circle whereby the child is deprived of the affection, guidance and care of his parent. Gleitz v. Gleitz, 88 App 337, 45 O.O. 140, 98 N.E.2d 74.

§ 3115.16. Duties of Responding Court; Duties of County Prosecutor.

(A) After a responding court receives from the initiating court the copies as provided in § 3115.15 of the Revised Code, it shall docket the case and notify the prosecuting attorney.

(B) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(C) If the prosecuting attorney neglects or refuses to represent the obligee, the county director of welfare may undertake the representation.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

Under the Uniform Reciprocal Enforcement of Support Act, the failure to provide legal representation to an obligee during all of the stages involved in carrying out the enforcement provisions of the Act is "plain error." Brown v. Brown, O.App.3d 26, 16 O.B.R. 28, 474 N.E.2d 613.

The Uniform Reciprocal Enforcement of Support Act, effective in North Carolina and Ohio, is a measure designed to afford a practical method in addition to other remedies, to enforce the legal obligation to support a dependent or dependents by one who has left the State in which the dependents reside. Where an abandoned wife in North Carolina on behalf of herself and minor children initiates a proceeding in that State under such act to secure such support from her husband who resides in Ohio and is the father of the children, a preliminary hearing is had thereon and a transcript of the proceeding is certified to the appropriate court in Ohio, where the husband and father personally appears and testifies, and the Ohio court makes a support order against him in substantial accordance with the provisions of the Ohio act and with which order he partially complies over a period of years, it is then too late for him, when cited for contempt by reason of his failure to make the ordered payments, and while he is delinquent, to challenge for the first time the constitutionality and validity of the act and the order made in the proceeding. Levi v. Levi, 170 O.S. 533, 11 O.O.2d 364, 166 N.E.2d 744.

The requirement of this section, that the court cause "notice of the time and place of hearing to be served on the defendant" is satisfied by the issuance of a citation for the defendant to appear. Robinson v. Robinson, 8 O.App.2d 235, 37 O.O.2d 218, 221 N.E.2d 598.

§ 3115.17. Search for Obligor or His Property.

(A) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(B) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by §§ 3115.01 to 3115.34, inclusive, of the

Revised Code apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(C) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.18. Securing Evidence from Responding Court.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court may, upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.19. Self-Incrimination; Immunity.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.20. Privileged Communications; General Rule Applicable.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under §§ 3115.01 to 3114.34, inclusive, of the Revised Code. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.21. Rules of Evidence; Sanctions for Preventing Visitation or Failing To Pay Support.

(A) In any hearing under this chapter, the court is bound by the rules of evidence that bind the juvenile courts. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or proceeding to enforce a foreign money judgment. The determination of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

(B) In an action under this chapter, after providing notice and holding a hearing, the court may impound funds that are paid to the court by the obligor in accordance with the support order upon which the action is based. The impoundment of funds is authorized only if the obligor submits proof and the court finds that the obligor has been continuously or repeatedly prevented by the person having custody of a child for whom the obligor owes a duty of support, as established by a support order, from exercising a right of visitation, as established by court order, with respect to the child.

(C) In an action under this chapter, after providing notice and holding a hearing, if a court finds that an obligor owes a duty of support to an obligee pursuant to a support order, and the obligor has willfully failed to provide such support after having been found financially able to provide such support, the court may suspend any right to visitation possessed by the obligor of the support order until the court is satisfied that the support has been, or will be, provided.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

The violation of a custody order is not a defense to an action for payment of support under Revised Code ch. 3115. Iowa ex rel. Cantrell v. Cantrell, 459 N.E.2d 242 (Ohio, 1983).

Revised Code § 3115.21(B) does not authorize the forgiveness of past-due unpaid support if the obligee prevents the obligor from exercising a right of visitation. Rather, Revised Code § 3115.21(B) only authorizes, after notice and hearing, the impoundment of funds when the obligee prevents the obligor from exercising a right of visitation; and, if the funds are impounded, the obligation to pay support still remains. Brown v. Brown, 16 O.App.3d 26, 16 O.B.R. 28, 474 N.E.2d 613.

There is no authority, either in Revised Code § 3115.21 or in Revised Code § 3109.05, for the suspension of a support order because of the denial or interference with visitation rights. Id.

Where a child support action is transferred to an Ohio court of common pleas pursuant to Revised Code Chapter 3115, the Ohio Reciprocal Enforcement of Support Act, Revised Code § 3115.21(B) confers authority on the trial court to withhold support payments from the custodian of the children pending the custodian's compliance with visitation rights previously granted. Sperry v. Hlutke, 19 O.App.3d 156, 19 O.B.R. 246, 483 N.E.2d 870.

§ 3115.22. Support Orders; Payment; Enforcement.

(A) If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement for support and may subject the property of the obligor to the order. Support orders made pursuant to §§ 3115.01 to 3115.34 of the Revised Code shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that

proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the courts first issuing the order.

(B) The responding court shall transmit to the initiating court a copy of all orders of support or for reimbursement of support.

(C) In this State, payments under division (A) of this section shall be made to the bureau of support.

(D) Each order for child support made under this section on or after April 15, 1985, shall be accompanied, unless the order is subject to division (C) of § 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be withheld from the personal earnings or worker's compensation payments of the person required to pay the support in accordance with division (B)(1)(a) or (b) of § 3113.21 of the Revised Code, by an order requiring the amount ordered for support to be deducted from an account of the person required to pay the support in accordance with division (B)(1)(c)(ii) of that section, by a provisional order of the type described in division (B)(2) of that section, or by an order of the type described in division (G)(2) of that section, whichever is appropriate under the requirements of that section. Each order for child support made under this section on or after April 15, 1985, that is subject to division (C) of § 3113.21 of the Revised Code may be accompanied by an order requiring the posting of bond in accordance with that division, but shall not be accompanied by an order of a type described in division (B)(1)(a), (1)(b), (1)(c), (2)(a)(i), (2)(a)(ii), (2)(a)(iii), (2)(a)(iv), or (G) of that section.

If any person required to pay child support under an order made under this section on or after April 15, 1985, is found in contempt of court for failure to make support payments under the order, the court that makes the finding shall, in addition to any other penalty or remedy imposed, assess all court costs arising out of the contempt proceeding against the person and require the person to pay any reasonable attorney's fees of any adverse party, as determined by the court, that arose in relation to the act of contempt.

HISTORY: (134 v H 504, eff. 10-27-71; 140 v. H 614, eff. 4-10-85.)

Cases

Under the Uniform Reciprocal Enforcement of Support Act, the failure to provide legal representation to an obligee during all of the stages involved in carrying out the enforcement provisions of the Act is "plain error." Brown v. Brown, 16 O.App.3d 26, 16 O.B.R. 28, 474 N.E.2d 613.

§ 3115.23. Powers of Responding Court.

In addition to its other powers the responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders which include:

(A) Requiring the obligor to furnish a cash deposit or bond of a character and amount to assure payment of any amount due;

(B) Requiring the defendant to make payments at specified intervals to the clerk of the court, other persons designated by the court, or the obligee and to report personally to the clerk at such times as are ordered;

(C) Punishing under the power of contempt an obligor who violates any order of the court.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.24. Defense of Nonpaternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.25. Transmitting Payments to Initiating Court.

A responding court has the following duties which may be carried out through the clerk of court or other person designated by the court:

(A) Upon the receipt of a payment by the obligor pursuant to any order of the court or otherwise, to transmit it forthwith to the initiating court;

(B) Upon request, to furnish to the initiating court a certified statement of all payments made by the obligor.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.26. Disbursing Payments.

An initiating court shall, through the clerk of such court or other person designated by the court, receive and disburse forthwith all payments made by the obligor or transmitted by the responding court.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.27. Proceedings Not Stayed by Pending Actions; Support Pendente Lite.

A responding court shall not stay the proceeding or refuse a hearing under §§ 3115.01 to 3115.34, inclusive, of the Revised Code because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the

court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.28. Coordination of Overlapping Support Orders.

Any support order issued by a court of this State pursuant to §§ 3115.01 to 3115.34, inclusive, of the Revised Code, does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (134 v H 504, eff. 10-27-71.)

Cases

After consolidation of a URESA action and the prior local divorce action the trial court may not, purportedly pursuant to its continuing jurisdiction under CivR75(I), modify a party's child support obligation where the other party to the divorce action was not served with notice of the motion for modification and had no opportunity to protect her interests in such modification proceeding. Rondy v. Rondy, 468 N.E.2d 81 (Ohio, 1983).

§ 3115.29. Participation in Support Proceeding Not To Confer Personal Jurisdiction in Other Actions.

Participation in any proceedings under §§ 3115.01 to 3115.34, inclusive, of the Revised Code, does not confer upon any court jurisdiction over any of the parties thereto in any other proceeding.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.30. Intercounty Application of Reciprocal Support Act.

§§ 3115.01 to 3115.34, inclusive, of the Revised Code apply when both the obligee and the obligor are in this State, but in different counties. If the court of the county in which the complaint is filed finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.31. Appeal by Director of Public Welfare.

If the director of public welfare is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(A) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

(B) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.32. Remedies of Obligee; Registering Foreign Support Order.

(A) If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in this section.

(B) The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this section.

(C) The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

(D) If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, shall represent the obligee in proceedings under this section. If the prosecuting attorney neglects or refuses to represent the obligee, the county director of welfare may undertake the representation.

(E) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court: (1) three certified copies of the order with all modifications thereof (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this section.

(F) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

(G) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(H) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(I) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.33. Statutory Construction.

§§ 3115.01 to 3115.34, inclusive, of the Revised Code shall be so construed as to effectuate the general purpose to make uniform the law of those States which enact a Uniform Reciprocal Enforcement of Support Act.

HISTORY: (134 v H 504, eff. 10-27-71.)

§ 3115.34. Severability.

If any provision of §§ 3115.01 to 3115.34, inclusive, of the Revised Code or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of §§ 3115.01 to 3115.34, inclusive, of the Revised Code, that can be given effect without the invalid provision or application, and to this end the provisions of §§ 3115.01 to 3115.34, inclusive, of the Revised Code are severable.

HISTORY: (134 v H 504, eff. 10-27-71.)

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§ 1600.1. Short Title.

This Act may be cited and referred to as the Uniform Reciprocal Enforcement of Support Act of 1953.

HISTORY: (L. 1953, p. 61, § 1.)

§ 1600.2. Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation the enforcement of duties to support and to make uniform the law with respect thereto.

HISTORY: (L. 1953, p. 61, § 2.)

Cases

Construction and application.

Former husband's motion to reduce alimony was request for affirmative relief and his right to proceed with that action could not be prejudiced by former wife's voluntary dismissal of her action to enforce Alabama court's order awarding periodic alimony. Mullis v. Mullis, 669 P.2d 763 (Okla., 1983).

Although periodic alimony awarded by Alabama court would be void if initially awarded in Oklahoma, because it could be modified in Alabama, it could be readjusted in Oklahoma. Id.

Three methods of proceeding on sister-State judgment are: registering judgment or decree under Uniform Enforcement of Foreign Judgments Act (§ 719 et seq. of this title), proceeding under Uniform Reciprocal Enforcement of Support Act, or bringing common-law action on foreign judgment or decree and the remedies are cumulative. Hudson v. Hudson, Okl.App., 569 P.2d 521 (1976).

Where action for support of child was filed in California court, which certified case to Oklahoma district court under Uniform Reciprocal Enforcement of Support Act, provisions of Oklahoma Act of 1953 were applicable and would be enforced. Green v. Green, Okl., 309 P.2d 276 (1957).

The Uniform Support of Dependents Act, §§ 1601 to 1610 of this title (repealed) provided a procedure designed to create an effective civil remedy to enforce support of abandoned wives and children when a husband-father absconded to another State. Maxim v. Maxim, Dom.Rel.Ct., 118 N.Y.S.2d 541 (1953).

Jurisdiction.

Where former wife filed petition under Uniform Reciprocal Enforcement of Support Act to enforce Alabama alimony award, former wife place former husband's

duty to support her before court and former wife's voluntary dismissal, interposed after she obtained affirmative relief from court for arrearages, did not divest court of jurisdiction over remaining issue of former husband's motion to reduce future support. Mullis v. Mullis, 669 P.2d 763 (Okla., 1983).

In Oklahoma mother's action against father seeking modification of child support ordered by superior court of California as part of divorce decree, Oklahoma courts did not acquire personal jurisdiction over father, who was member of Marine Corps stationed in California, so as to modify support decree, prospectively, in absence of showing that father had purposefully availed himself of privilege of conducting activities in Oklahoma. Hudson v. Hudson, Okl.App., 569 P.2d 521 (1976).

Where action for support of child was filed in California court which certified case to Oklahoma district court, and summons and complaint were served on father, Oklahoma court had jurisdiction of matter under Uniform Reciprocal Enforcement of Support Act. Green v. Green, Okl., 309 P.2d 276 (1957).

Immunity from process.

Divorced husband, who was resident of Arizona, and who was in attendance in children's court in Oklahoma County, Oklahoma, by reason of notice that hearing would be held on petition charging his oldest son was delinquent child and that he might appear and be heard was immune from service of process in Oklahoma County in suit by divorced wife against him to recover child support for three minor children. Bingham v. Bingham, Okl., 366 P.2d 396 (1961).

§ 1600.3. Definitions.

As used in this act unless the context requires otherwise:

(a) "COURT" means district court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this act.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding or enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced. "RESPONDING AGENT" means the State official to whom initiating States send all cases initiated in another State under this act.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (Am.L. 1980, ch. 95, § 1, emerg. eff. April 10, 1980.)

Cases

Construction and application.

Although periodic alimony awarded by Alabama court would be void if initially awarded in Oklahoma, because it could be modified in Alabama, it could be readjusted in Oklahoma. Mullis v. Mullis, 669 P.2d 763 (Okla., 1983).

Where former wife filed petition under Uniform Reciprocal Enforcement of Support Act to enforce Alabama alimony award, former wife place former husband's duty to support her before court and former wife's voluntary dismissal, interposed after she obtained affirmative relief from court for arrearages, did not divest court of jurisdiction over remaining issue of former husband's motion to reduce future support. Id.

Former husband's motion to reduce alimony was request for affirmative relief and his right to proceed with that action could not be prejudiced by former wife's voluntary dismissal of her action to enforce Alabama court's order awarding periodic alimony. Id.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of §1600.1 et seq., of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80.155 (Nov. 18, 1980).

§ 1600.4. Remedies in Addition to Existing Remedies.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1953, p. 61, § 4.)

Cases

Construction and application.

Three methods of proceeding on sister-State judgment are: registering judgment or decree under Uniform Enforcement of Foreign Judgments Act (§ 719 et seq. of this title), proceeding under Uniform Reciprocal Enforcement of Support Act, or bringing common-law action on foreign judgment or decree and the remedies are cumulative. Hudson v. Hudson, Okl.App., 569 P.2d 521 (1976).

§ 1600.5. Duties of Support Binding Regardless of Obligee's Residence.

Duties of support arising under the law of this State bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (L. 1953, p. 61, § 5.)

§ 1600.6. Extradition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person.

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this Act apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1953, p. 61, § 6; L. 1969, ch. 336, § 2.)

§ 1600.7. Rules for Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceeding for support under this Act or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding has been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed, and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1953, p. 61, § 7; L. 1961, p. 66, § 2, eff. July 14, 1961; L. 1969, ch. 336, § 3.)

§ 1600.8. Law Governing; Presumption of Presence in Responding State.

Duties of support applicable under this Act are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1953, p. 61, § 8.)

Cases

Construction and application.

Where district judge in Oklahoma made preliminary finding that parties' child, who resided with her mother in Oklahoma, was entitled to child support from former husband, a resident of New York, that court's certification, under the Uniform Support of Dependents Law, was one of entitlement until the child achieved age 18, as under Oklahoma law, a parent is chargeable with the support of his or her child under the age of 18 years; therefore, under New York law, the parties' Texas divorce judgment terminated former husband's child support obligation on the child's 18th birthday. Nola J. v. Hugh F., 439 N.Y.S.2d 70, 108 Misc.2d 925 (1981).

Under the Uniform Support of Dependents Law, once the initiating court makes its preliminary determination as to petitioner's right to support and the proceeding is forwarded, the responding court determines whether the respondent owed a corresponding duty to the petitioner; latter determination is made according to the laws of the responding State. Id.

§ 1600.9. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this Act as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1953, p. 62, § 9; L. 1969, ch. 336, § 4.)

§ 1600.10. Enforcement by Proceeding Under Act; Jurisdiction.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Jurisdiction of any proceeding under this act is vested in the District Court.

HISTORY: (L. 1953, p. 62, § 10; L. 1961, p. 66, § 3, eff. July 14, 1961; L. 1969, ch. 336, § 5.)

Cases

Construction and application.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq., of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80-155 (Nov. 18, 1980).

To have jurisdiction to redetermine issue of custody of child, conditions affecting welfare of child must have changed and minor child must be lawfully domiciled in State. Waldmann v. Waldmann, Okl.App., 567 P.2d 532 (1977).

Change of custody order placing child in custody of father was null and void where record was devoid of any showing of notice given to mother of hearing to modify custody and where court in custody case did not have jurisdiction to change custody of child from mother to father because it arose out of action instituted under Uniform Reciprocal Enforcement of Support Act. Id.

Jurisdiction to change custody of child must be based upon some other jurisdictional basis, not upon a cause of action for support, or a mutual agreement entered into between parties, pursuant to Uniform Reciprocal Enforcement of Support Act. Id.

§ 1600.11. Contents of Petition; Filing.

(a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition shall be sent to the responding agent and may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (Am.L. 1980, ch. 95, § 2, emerg. eff. April 10, 1980.)

Cases

Construction and application.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq. of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80-155 (Nov. 18, 1980).

§ 1600.12. Prosecuting Attorney To Represent Obligee.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court shall represent the obligee in any proceeding under this Act.

HISTORY: (L. 1953, p. 62, § 12; L. 1969, ch. 336, § 7.)

§ 1600.13. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1953, p. 62, § 13; L. 1969, ch. 336, § 8.)

§ 1600.14. Duty of Court of State Acting as Initiating State.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three (3) copies of the petition and its certificate and one copy of this act to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1953, p. 62, § 14; L. 1969, ch. 336, § 9.)

Cases

Construction and application.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq. of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80-155 (Nov. 18, 1980).

§ 1600.15. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as responding State, including fees for filing of pleadings, service of process, seizure of property, attorney's fees, where so ordered, stenographic or duplication service, or fees for other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or a political subdivision thereof, if funds are legally available for such purpose. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1953, p. 62, § 15; L. 1961, p. 66, § 4, eff. July 14, 1961; L. 1969, ch. 336, § 10.)

Cases

In general.

The court clerk may not deduct court costs and poundage from the child support payment made to an obligee, woman or man, under this section. Op.Atty.Gen. No. 74-168 (Sept. 16, 1975).

§ 1600.16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process if that is permissible under the law of the responding State; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him, upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1953, p. 62, § 16; L. 1969, ch. 336, § 11.)

§ 1600.17. State Information Agency.

(a) The Director of the Department of Human Services is designated as the State Information Agency under this Act, and it shall:

(1) Be the sole responding agent for the State of Oklahoma;

(2) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act, and upon the adjournment of each session of the Legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State Information Agencies;

(3) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(4) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State, and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.[1/]

HISTORY: (Am.L. 1980, ch. 95, § 3, emerg. eff. April 10, 1980.)

§ 1600.18. Duty of Court of State Acting as Responding State.

(a) After the responding court receives copies of the petition, certificate and act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the State Department of Public Welfare may undertake the representation, in the same way as provided for its action when the proceeding is initiated here.

HISTORY: (L. 1953, p. 63, § 18; L. 1961, p. 66, § 5, eff. July 14, 1961; L. 1969, ch. 336, § 13.)

Cases

Construction and application.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq. of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80-155 (Nov. 18, 1980).

1/ 42 U.S.C.A. § 301 et seq.

§ 1600.19. Further Duty of Court of Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court, and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to the court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this act apply to the recipient of the documents so forwarded. When the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (L. 1953, p. 63, § 19; L. 1961, p. 66, § 6; L. 1969, ch. 336, § 14.)

Cases

Construction and application.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq. of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen No. 80-155 (Nov. 18, 1980).

§ 1600.20. Procedure.

The court shall conduct proceedings under this Act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

HISTORY: (L. 1953, p. 63, § 20.)

§ 1600.20.a. Continuance; Depositions.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit the evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1969, ch. 336, § 16.)

§ 1600.20.b. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution, but only with respect to matters revealed by his testimony, except for perjury committed in this testimony, to the full extent necessary to satisfy constitutional guaranties.

HISTORY: (L. 1969, ch. 336, § 17.)

§ 1600.20.c. Support Order Issued by Another Court; Evidence.

In any hearing for the civil enforcement of this act, if the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity, or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by court.

HISTORY: (L. 1969, ch. 336, § 18.)

Cases

Although periodic alimony awarded by Alabama court would be void if initially awarded in Oklahoma, because it could be modified in Alabama, it could be readjusted in Oklahoma. Mullis v. Mullis, 669 P.2d 763 (Okla., 1983).

Former husband's motion to reduce alimony was request for affirmative relief and his right to proceed with that action could not be prejudiced by former wife's voluntary dismissal of her action to enforce Alabama court's order awarding periodic alimony. Id.

Where former wife filed petition under Uniform Reciprocal Enforcement of Support Act to enforce Alabama alimony award, former wife placed former husband's duty to support her before court and former wife's voluntary dismissal, interposed after she obtained affirmative relief from court for arrearages, did not divest court of jurisdiction over remaining issue of former husband's motion to reduce future support. Id.

§ 1600.20.d. Determination of Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may continue the hearing until the paternity issue has been adjudicated in a court of competent jurisdiction.

HISTORY: (L. 1969, ch. 336, § 19.)

§ 1600.21. Order of Support; Enforcement.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this Act shall require that payments be made to the proper officer of the court of the responding State. The court and prosecuting attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the prosecuting attorney or other counsel shall send a certified copy of the order to the sheriff of any county where it appears that proceedings to enforce the order would be effective. The sheriff to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1953, p. 63, § 21; L. 1961, p. 67, § 8, eff. July 14, 1961; L. 1969, ch. 336, § 15.)

Cases

In general.

Although periodic alimony awarded by Alabama court would be void if initially awarded in Oklahoma, because it could be modified in Alabama, it could be readjusted in Oklahoma. Mullis v. Mullis 669 P.2d 764 (Okla., 1983).

Where former wife filed petition under Uniform Reciprocal Enforcement of Support Act to enforce Alabama alimony award, former wife placed former husband's duty to support her before court and former wife's voluntary dismissal, interposed after she obtained affirmative relief from court for arrearages, did not divest court of jurisdiction over remaining issue of former husband's motion to reduce future support. Id.

Former husband's motion to reduce alimony was request for affirmative relief and his right to proceed with that action could not be prejudiced by former wife's voluntary dismissal of her action to enforce Alabama court's order awarding periodic alimony. Id.

The District Attorney has the duty to enforce and help collect delinquent child support payments pursuant to the provisions of § 1600.1 et seq. of this title, unless both parties reside in the same county within the District Attorney's jurisdiction. Op.Atty.Gen. No. 80-155 (Nov. 18, 1980).

Where action for support of child was filed in California court, which certified case to Oklahoma District Court under Uniform Reciprocal Enforcement of Support Act, provisions of Oklahoma Act of 1953 were applicable and would be enforced. Green v. Green, Okl., 309 P.2d 276 (1957).

§ 1600.22. Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (L. 1953, p. 63, § 22.)

§ 1600.23. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its order and in particular:

(a) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.

(b) To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (L. 1953, p. 63, § 23; L. 1961, p. 67, § 9, eff. July 14, 1961.)

Cases

Construction and application.

Divorce decree provisions for alimony in nature of support may be enforced by contempt proceeding; however, if such payments are in nature of property settlement they may not be enforced by contempt proceedings. Huchteman v. Huchteman, Okl. 557 P.2d 427 (1976).

Where first payment of lump-sum alimony was not due until two years after divorce decree was entered, wife's petition did not request alimony for support but alleged that in lieu of further property settlement husband should be required to pay a reasonable sum of alimony and court awarded wife alimony in lieu of property settlement not conditioned on death or remarriage, the "alimony" payments were intended to be a division of property rather than alimony for support and, hence, were not enforceable by way of contempt proceedings. Id.

§ 1600.24. Additional Duties of Court of State Acting as Responding State.

A responding court has the following duties which may be carried out through any proper subordinate court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise, and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (L. 1953, p. 63, § 24; L. 1969, ch. 336, § 20.)

§ 1600.25. Court To Receive and Disburse Payments.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through any appropriate agency of the court.

HISTORY: (L. 1953, p. 63, § 25; L. 1969, ch. 336, § 21.)

§ 1600.26. Husband and Wife as Witnesses.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (L. 1953, p. 64, § 26.)

§ 1600.27. Rules of Evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the Juvenile Court.

HISTORY: (L. 1953, p. 64, § 27.)

§ 1600.28. Application of Payments.

A support order made by a court of this State pursuant to this Act does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1953, p. 64, § 28; L. 1961, p. 68, § 11, eff. July 14, 1961; L. 1969, ch. 336, § 22.)

Cases

Although periodic alimony awarded by Alabama court would be void if initially awarded in Oklahoma, because it could be modified in Alabama, it could be readjusted in Oklahoma. Mullis v. Mullis 669 P.2d 764 (Okla., 1983).

Former husband's motion to reduce alimony was request for affirmative relief and his right to proceed with that action could not be prejudiced by former wife's voluntary dismissal of her action to enforce Alabama court's order awarding periodic alimony. Id.

Where former wife filed petition under Uniform Reciprocal Enforcement of Support Act to enforce Alabama alimony award, former wife placed former husband's duty to support her before court and former wife's voluntary dismissal, interposed after she

obtained affirmative relief from court for arrearages, did not divest court of jurisdiction over remaining issue of former husband's motion to reduce future support. Id.

§ 1600.29. Effect of Participation in Proceeding.

Participating in any proceedings under this Act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (L. 1953, p. 64, § 29.)

§ 1600.30. Absent Petitioner; Presentment of Evidence by Respondent.

In the absence of the petitioner if the respondent presents evidence which constitutes a defense, the court shall continue the case for a reasonable time to permit the submission of evidence by the petitioner by deposition or otherwise and further evidence by the parties. If the respondent does not present evidence which constitutes a defense, the court may give judgment for the petitioner.

HISTORY: (L. 1961, p. 67, § 7, eff. July 14, 1961.)

§ 1600.31. Proceedings Not To Be Stayed; Support Order Pendente Lite; Bond.

A responding court shall not stay the proceeding or refuse a hearing under this act because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1961, p. 68, § 10, eff. July 14, 1961; L. 1969, ch. 336, § 23.)

§ 1600.31.a. Appeal from Support Order.

If the Director of the State Department of Public Welfare is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1969, ch. 336, § 24.)

§ 1600.32. Additional Remedies of Obligee.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (L. 1961, p. 68, § 12, eff. July 14, 1961.)

§ 1600.33. Registration of Foreign Support Order.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (L. 1961, p. 68, § 13, eff. July 14, 1961.)

§ 1600.34. Registry of Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1961, p. 68, § 14, eff. July 14, 1961.)

§ 1600.34.a. Representation in Registry Proceedings.

If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, or, on his neglect or refusal, an attorney duly appointed by the court on request of the appropriate welfare authorities shall represent the obligee in proceedings relating to registry.

HISTORY: (L. 1969, ch. 336, § 25.)

§ 1600.35. Procedure for Registration.

An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three (3) certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last-known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act.

HISTORY: (L. 1961, p. 68, § 15, eff. July 14, 1961; L. 1969, ch. 336, § 26.)

§ 1600.36. Notice of Registration.

Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the

registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1961, p. 68, § 16, eff. July 14, 1961; L. 1969, ch. 336, § 27.)

§ 1600.37. Effect of Registered Foreign Support Order; Enforcement; Defenses; Stay.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order stands confirmed without further order or proceeding.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1961, p. 68, § 17, eff. July 14, 1961; L. 1969, ch. 336, § 28.)

§ 1600.38. Petitioner and Respondent Both in State but in Different Counties.

When, by the petition, by affidavit, or otherwise, it is made to appear to the district court or the family court in which the petition for support is filed that the petitioner and the respondent both are in this State but in different counties, that the petition sets forth facts from which it may be determined that the respondent owes a duty of support to the persons by whom or on whose behalf the petition is filed, and that a court of another county in this State may obtain jurisdiction of the respondent or his property, and the court so finds, the clerk of the court shall send three (3) copies of the petition and a certificate of the findings to the court of the county in which it appears that the respondent or his property may be found. The clerk of the court of the county receiving these copies shall notify the county attorney in his county or the friend of the court of their receipt. The county attorney or friend of the court and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State, and subsequent proceedings shall be similar to those which would be followed in respect to a petition forwarded from an initiating State.

HISTORY: (L. 1961, p. 68, § 18.)

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General Provisions

§ 110.005. Short Title.

This chapter may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

HISTORY: (1953, ch. 427, § 27; 1979, ch. 484, § 1.)

Cases

In an action for support filed by the State of Oregon under the Revised Uniform Reciprocal Enforcement of Support Act, requesting enforcement of a support order entered by a Colorado court, it was not a defense that the Colorado court had awarded support for a child not yet born or that the parents, who filed for a divorce, were instead awarded a legal separation. State ex rel Greenlee v. Groat, 619 P.2d 667 (Or., 1980).

In an action under the Uniform Reciprocal Enforcement of Support Act, the State where the husband resides has subject matter jurisdiction to modify a California support order. State ex rel State of Louisiana v. Phillips, 591 P.2d 1196 (Or., 1979), petition for reconsideration den., 595 P.2d 1276 (Or., 1979).

In view of a father's income of $750 per month, $75 support per month for each of two children was more appropriate than $50 per month. State ex rel State of Colorado v. Gwyn, 587 P.2d 1057 (Or., 1978).

A mother initiated a Uniform Reciprocal Enforcement of Support Act proceeding in Utah. The Clackamas County circuit court in Oregon entered an order requiring the father, an Oregon resident, to pay $50 per month support of each of his six children living in Utah. Under Or.Rev.Stat. 110.171 the respondent has the burden to show cause why the relief sought by the initiating State should not be granted, and thus the trial court's refusal to allow the father to fully present his evidence constituted error. State ex rel Fulton v. Fulton, 571 P.2d 179 (Or., 1977).

§ 110.006. Uniformity of Interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (1953, ch. 427, § 26; 1979, ch. 484, § 2.)

Cases

A mother residing in Nebraska sought enforcement of a Nebraska divorce decree ordering the father, a resident of Oregon, to pay child support. The circuit court ordered the father to pay $50 per month for the support of two minor children which was the amount specified in the Nebraska decree. The State appealed, arguing the $25 per child was inadequate in view of the father's income and the amount should be modified. The majority of the decisions in other jurisdictions, Or.Rev.Stat. 110.006 and 110.175, and the

decision in Clarkston v. Bridge, 539 P.2d 1094 (Or., 1975), support the proposition that in actions brought under the Uniform Reciprocal Enforcement of Support Act the responding court may modify the initial decree or consider the action independent of the original proceeding. The responding court is therefore free to adjust the amount of support. State ex rel State of Nebraska v. Brooks, 583 P.2d 12 (Or., 1978).

In a Uniform Reciprocal Enforcement of Support Act proceeding the court has jurisdiction to determine the paternity of an illegitimate child. This interpretation is in accord with the laws of other States and carries out the intent of Or.Rev.Stat. 110.006, where it is stated that the Act is to be construed so as to maintain uniformity from State to State. Clarkston v. Bridge, 539 P.2d 1094 (Or., 1975).

§ 110.010. Repealed by 1953, ch. 427, § 29.

§ 110.011. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1953, ch. 427, § 1; 1979, ch. 484, § 3.)

§ 110.020. Repealed by 1953, ch. 427, § 29.

§ 110.021. 1953, ch. 427, § 2; subsection (4) enacted as part of subsection (3), subsection (10) enacted as part of subsection (9) by 1969, ch. 417, § 1; 1973, ch. 280, § 1; repealed by 1979, ch. 484, § 4 (110.022 enacted in lieu of 110.021).

§ 110.022. Definitions.

(1) "COURT" means the circuit court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DISTRICT ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(3) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to a proceeding for dissolution, separation, separate maintenance, or otherwise and includes, but is not limited to, the duty to pay arrearages of support past due and unpaid and the duty to pay support for a "child attending school" as defined in Or.Rev.Stat. 107.108 (4) where the other jurisdiction imposes the same or substantially similar duty of support.

(4) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(5) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(6) "LAW" includes both common and statutory law.

(7) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(8) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(9) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(10) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(11) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(12) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(13) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1979, ch. 484 § 5 (enacted in lieu of 110.021).)

Cases

A former wife petitioned the court to register a California dissolution decree, to modify the decree by increasing the support duty of $75 per month for each of four children to $125 per month, and to extend the support period for those children between 18 and 21 years of age who were attendings school full-time. Or.Rev.Stat. 107.108 authorizes an Oregon domestic relations court to provide for the support of children over 18 and under 21 who are attending school. California, however, has no provision for support of children over 18 years. Although the registered California decree was modifiable as an Oregon decree under Or.Rev.Stat. 110.135(1)(a) and 110.281(1), the "duty of support" is qualified under Or.Rev.Stat. 110.022(3) by the express requirement that the other jurisdiction impose the same or substantially similar duty to support. Since California law does not provide for the support by the noncustodial parent of children over 18 and attending school, the Oregon court may not require support under those circumstances. In re Marriage of Tavares, 651 P.2d 133 (Or., 1982).

In a Chapter 110 proceeding, a father was ordered to reimburse the State of California for public assistance provided his two minor children, although there had been no support order or decree issued by a California court. Under 110.022(3), the Uniform Reciprocal Enforcement of Support Act applies whenever an Oregon court finds a duty of support imposed or imposable by law. It is not required that the initiating State issue a support order first. State ex rel State of California v. Lagoy, 634 P.2d 289 (Or., 1981).

An unwed mother in Oregon filed a Uniform Reciprocal Enforcement of support Act petition seeking support for her minor daughter from the alleged father. The trial court found the respondent to be the father and awarded the mother $75 per month support. The Act authorizes a finding of paternity under Or.Rev.Stat. 110.201, which allows a responding court to find and enforce a duty of support where it has not been previously established in another proceeding. Further, the "duty of support" as defined in Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022) includes a duty of support imposed or imposable by law. This conclusion is supported by Or.Rev.Stat. 110.251, allowing or compelling husbands and wives to testify to any relevant matter in a proceeding under this chapter, including marriage and partentage. Clarkson v. Bridge, 539 P.2d 1094 (Or., 1975).

A father, required by a Washington divorce decree and property settlement agreement to pay $25 per month support for each of five children, asserted that the trial court erred when it did not allow interrogatories inquiring into the mother's financial status and related matters. Under Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022), Or.Rev.Stat. 110.031, and Or.Rev.Stat. 110.251, the only relevant matter in a petition filed under the Uniform Reciprocal Enforcement of Support Act is the duty to support, and the questions to which the father sought answers were not relevant to that issue. State ex rel State of Washington v. Reed, 496 P.2d 58 (Or., 1972).

§ 110.030. Repealed by 1953, ch. 427, § 29.

§ 110.031. Remedies Additional to Other Remedies.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1953, ch. 427, § 3.)

Cases

The fact that a wife seeking to enforce the support obligation of her former husband did not follow the procedures of the Uniform Reciprocal Enforcement of Support Act did not preclude the Oregon court's jurisdiction, since Or.Rev.Stat. 110.031 provides that remedies in Chapter 110 are in addition to and not substitutes for other remedies. In re Marriage of Quenzer, 589 P.2d 1217 (Or., 1979).

A father, required by a Washington divorce decree and property settlement agreement to pay $25 per month support for each of five children, asserted that the trial court erred when it did not allow interrogatories inquiring into the mother's financial status and related matters. Under Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022), Or.Rev.Stat. 110.031, and Or.Rev.Stat. 110.251, the only relevant

matter in a petition filed under the Uniform Reciprocal Enforcement of Support Act is the duty to support, and the questions to which the father sought answers were not relevant to that issue. State ex rel State of Washington v. Reed, 496 P.2d 58 (Or., 1972).

§ 110.040. Repealed by 1953, ch. 427, § 29.

§ 110.041. Extent of Duties of Support of Obligors Who Are Present in this State.

Duties of support arising under the law of this State, when applicable under Or.Rev.Stat. 110.071, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (1953, ch. 427, § 4.)

§ 110.045. Effect of Participation on Jurisdiction.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1979, ch. 484, § 42.)

§ 110.050. Repealed by 1953, ch. 427, § 29.

Criminal Enforcement

§ 110.051. 1953, ch. 427, § 5; repealed by 1979, ch. 484, § 6 (110.052 enacted in lieu of 110.051).

§ 110.052. Extradition of Persons Charged Criminally with Failing To Provide Support.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this section need not State or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1979, ch. 484, § 7 (enacted in lieu of 110.051).)

§ 110.060. Repealed by 1953, ch. 427, § 29.

§ 110.061. 1953, ch. 427, § 6; repealed by 1979, ch. 484, § 8 (110.062 enacted in lieu of 110.061).

§ 110.062. Extradition Procedure; Exemptions.

(1) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any District Attorney of this State to satisfy the Governor that at least 60 days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(2) If, under a substantially similar chapter, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any District Attorney to investigate the demand and to report to the Governor whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1979, ch. 484, § 9 (enacted in lieu of 110.061).)

Cases

A resident of Oregon with support obligations for minor children residing in another State petitioned an Oregon court to have a support order entered against him. Or.Rev.Stat. § 110.061 (repealed and replaced by Or.Rev.Stat. § 110.062) confers jurisdiction on the Oregon courts to hear such a petition. Lefler v. Lefler, 218 OR 231, 344 P.2d 754 (1959).

Civil Enforcement

§ 110.071. What Duties of Support Are Applicable.

Except as provided in Or.Rev.Stat. 110.022 (3), duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1953, ch. 427, § 7; 1979, ch. 484, § 10.)

Cases

Under Or.Rev.Stat. 110.071, the obligor's duty of support is determined by the laws of the State where the obligor resides. Therefore, a noncustodial parent residing in California may not be required to support his children over 18 and attending school, since such a support obligation cannot be imposed under California law. In re Marriage of Tavares, 651 P.2d 133 (Or., 1982).

§ 110.081. 1953, ch. 427, § 8; repealed by 1979, ch. 484, § 11 (110.082 enacted in lieu of 110.081).

§ 110.082. Reimbursement of Public Entity Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1979, ch. 484, § 12 (enacted in lieu of 110.081).)

§ 110.091. 1953, ch. 427, § 9; repealed by 1979, ch. 484, § 13 (110.092 enacted in lieu of 110.091).

§ 110.092. Enforcement; Immunity of Obligor; Jurisdiction.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil comtempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Jurisdiction of any proceeding under this chapter is vested in the circuit court of each county.

HISTORY: (1979, ch. 484, § 14 (enacted in lieu of 110.091).)

§ 110.101. 1953, ch. 427, § 10; repealed by 1979, ch. 484, § 15 (110.102 enacted in lieu of 110.101).

§ 110.102. Content and Filing of Petition.

(1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. However, upon a showing to the court of a reasonable anticipation of serious emotional or bodily injury, the court may order that the address of the persons for whom support is sought be omitted from the petition. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on the person, other names and aliases by which the obligor has been or is known, the name of the obligor's employer, the obligor's fingerprints, and the obligor's Social Security number.

(2) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, support order, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1979, ch. 484, § 16 (enacted in lieu of 110.101).)

§ 110.110. Repealed by 1953, ch. 427, § 29.

§ 110.111. 1953, ch. 427, § 11; repealed by 1975, ch. 458, § 18.

§ 110.120. Repealed by 1953, ch. 427, § 29.

§ 110.121. Petition for minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1953, ch. 427, § 12; 1979, ch. 484, § 17.)

§ 110.130. Repealed by 1953, ch. 427, § 29.

§ 110.131. 1953, ch. 427, § 13; repealed by 1979, ch. 484, § 18 (110.132 enacted in lieu of 110.131).

§ 110.132. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be detemined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or the obligor's property, it shall so certify and cause three copies of the petition and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1979, ch. 484, § 19 (enacted in lieu of 110.131).)

§ 110.140. Repealed by 1953, ch. 427, § 29.

§ 110.141. 1953, ch. 427, § 14; 1957, ch. 468, § 1; 1959, ch. 587, § 1; repealed by 1969 ch. 417, § 2 (110.142 enacted in lieu of 110.141).

§ 110.142. Fees and Costs To Be Collected from Obligor; Priority of Costs or Fees.

(1) Initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor.

(2) These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1969, ch. 417, § 3 (enacted in lieu of 110.141).)

§ 110.150 Repealed by 1953, ch. 427, § 29.

§ 110.151 1953, ch. 427, § 15; repealed by 1979, ch. 484, § 20 (110.152 enacted in lieu of 110.151).

§ 110.152. Arrest and Release of Obligor.

If the court believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release the obligor upon the obligor's own recognizance or upon the obligor's giving a bond in an amount set by the court to assure the obligor's appearance at the hearing.

HISTORY: (1979, ch. 484, § 21 (enacted in lieu of 110.151).)

§ 110.160. Repealed by 1953, ch. 427, § 29.

§ 110.161. 1953, ch. 427, § 16; repealed by 1979, ch. 484, § 22 (110.162 enacted in lieu of 110.161).

§ 110.162. Attorney General as State Information Agency; Duties.

(1) The Attorney General's office is designated as the State Information Agency under this chapter. It shall:

(a) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar chapter;

(b) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter; and

(c) Forward to the court in this State which has jurisdictiiton over the obligor or the obligor's property petitions, certificates and copies of this chapter it receives from courts or information agencies of other States.

(2) If the State Information Agency does not know the location of the obligor or the obligor's property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (1979, ch. 484, § 23 (enacted in lieu of 110.161).)

§ 110.165. Powers of Support Enforcement Division.

Subject to the provisions of Or.Rev.Stat. 23.789, the Support Enforcement Division, when appropriate, shall have the same powers, duties and functions as the District Attorney under this chapter.

HISTORY: (1979, ch. 484, § 40.)

§ 110.170. Repealed by 1953, ch. 427, § 29.

§ 110.171. 1953, ch. 427, § 14; 1957, ch. 468, § 2; 1979, ch. 90, § 4; repealed by 1979, ch. 484, § 24 (110.172 enacted in lieu of 110.171.).

§ 110.172. Duties of Responding Court, District Attorney and Attorney General.

After the responding court receives copies of the petition, certificate and this chapter from the initiating court, the clerk of the court shall file the case and notify the District Attorney or Support Enforcement Division, as appropriate, of the action.

The District Attorney or support enforcement division shall prosecute the case diligently. They shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or the obligor's property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

If the District Attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (1979, ch. 484, § 25 (enacted in lieu of 110.171).)

Cases

A mother initiated a Uniform Reciprocal Enforcement of Support Act proceeding in Utah. The Clackamas County Circuit Court in Oregon entered an order requiring the father, an Oregon resident, to pay $50 per month support for each of his six children living in Utah. Under former Or.Rev.Stat. 110.171 (replaced by Or.Rev.Stat. 110.172), the respondent has the burden to show cause why the relief sought by the initiating State should not be granted, and thus the trial court's refusal to allow the father to fully present his evidence constituted error. State ex rel Fulton v. Fulton, 571 P.2d 179 (Or., 1977).

§ 110.174. Jurisdiction of Court Over Petitioner.

Except as provided in Or.Rev.Stat. 110.176, when a petitioner who is an obligee, as defined in Or.Rev.Stat. 23.760, seeks relief in this State under this chapter, the petitioner submits to the jurisdiction of the responding court in this State as to the responding court's power to set aside, alter or modify any provisions for the payment of future support in the order, decree or judgment which imposed the duty of support upon the obligor.

HISTORY: (1983, ch. 692, § 5.)

§ 110.175. 1975, ch. 628, § 4; repealed by 1979, ch. 484, § 47 (110.176 enacted in lieu of 110.175).

§ 110.176. Modification of Order When Child in Another State Subject to Uniform Act.

Or.Rev.Stat. 107.431 shall not apply to a proceeding under this chapter when the child to whom a duty of support is owed is in another State which has enacted the Uniform Child Custody Jurisdiction Act and a court in that State would have subject matter and personal jurisdiction under that Act to determine custody and visitation rights.

HISTORY: (1979, ch. 484, § 48 (enacted in lieu of 110.175).)

Cases

A wife who sought to take advantage of the benefits and protection of Oregon's laws by transferring her Uniform Reciprocal Enforcement of Support Act petition to Oregon consented to jurisdiction of the Oregon court under former Or.Rev.Stat. 110.175 (replaced

by Or.Rev.Stat. 110.176). State ex rel State of Louisiana v. Phillips, 591 P.2d 1196 (Or., 1979), petition for reconsideration den., 595 P.2d 1276 (Or., 1979).

A mother residing in Nebraska sought enforcement of a Nebraska divorce decree ordering the father, a resident of Oregon, to pay child support. The circuit court ordered the father to pay $50 per month for the support of two minor children, which was the amount specified in the Nebraska decree. The State appealed, arguing that $25 per child was inadequate in view of the father's income and the amount should be modified. The majority of the decisions in other jurisdictions, Or.Rev.Stat. 110.006 and former 110.175 (replaced by Or.Rev.Stat. 110.176), and the decisions in Clarkston v. Bridge, 539 P.2d 1094 (Or., 1975), support the proposition that in action brought under the Uniform Reciprocal Enforcement of Support Act the responding court may modify the initial decree or consider the action independent of the original proceeding. The responding court is therefore free to adjust the amount of support. State ex rel State of Nebraska v. Brooks, 583 P.2d 12 (Or., 1978).

§ 110.180. Repealed by 1953, ch. 427, § 29.

§ 110.181. 1953, ch. 427, § 17; 1961, ch. 630, § 1; repealed by 1979, ch. 484, § 26 (110.182 enacted in lieu of 110.181).

§ 110.182. Duties When Unable To Obtain Jurisdiction.

(1) The District Attorney or the support enforcement division shall use all means at their disposal to locate the obligor or the obligor's property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the District Attorney or support enforcement division shall inform the court of what has been done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or the obligor's property is not found in the county, and the District Attorney or Support Enforcement Division discovers that the obligor or the obligor's property may be found in another county of this State or in another State, they shall so inform the court. Upon request, the clerk of the court shall forward the documents received from the court in the initiating State and, if applicable, a certified copy of the court's file to a court in the other county of this State. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, the clerk shall forthwith notify the intitating court.

(3) If the District Attorney or support enforcement division has no information as to the location of the obligor or the obligor's property, they shall so inform the initiating court.

HISTORY: (1979, ch. 484, § 27 (enacted in lieu of 110.181).)

§ 110.185. Responding Court Duty When Action Pending or Taken in Another State.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation,

annulment, dissolution, support order, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1979, ch. 484, § 41.)

Cases

In a Uniform Reciprocal Enforcement of Support Act hearing, a father with a claimed duty of support is entitled to a full hearing. It constitutes error for the trial court to dismiss the petition "with prejudice" without making specific findings of fact as required by ORCP 54B(2). State ex rel State of Connecticut v. Levine, 647 P.2d 985 (Or., 1982).

Under Or.Rev.Stat. 110.185, a responding court cannot refuse to hear an action brought under the Uniform Reciprocal Enforcement of Support Act because of a pending or prior proceeding. State ex rel County of Humboldt v. Danielson, 639 P.2d 1300 (Or., 1982).

§ 110.190. Repealed by 1953, ch. 427, § 29.

§ 110.200. Repealed by 1953, ch. 427, § 29.

§ 110.201. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to such order.

HISTORY: (1953, ch. 427, § 18; 1979, ch. 484, § 28.)

Cases

An unwed mother in Oregon filed a Uniform Reciprocal Enforcement of Support Act petition seeking support for her minor daughter from the alleged father. The trial court found the respondent to be the father and awarded the mother $75 per month support. The Act authorizes a finding of paternity under Or.Rev.Stat. 110.201, which allows a responding court to find and enforce a duty of support where it has not been previously established in another proceeding. Further, the "duty of support" as defined in Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022) includes a duty of support imposed or imposable by law. This conclusion is supported by Or.Rev.Stat. 110.251, allowing or compelling husbands and wives to testify to any relevant matter in a proceeding under this chapter, including marriage and parentage. Clarkson v. Bridge, 539 P.2d 1094 (Or., 1975).

§ 110.210. Repealed by 1953, ch. 427, § 29.

§ 110.211. 1953, ch. 427, § 19; repealed by 1979, ch. 484, § 29 (110.212 enacted in lieu of 110.211).

§ 110.212. Responding Court To Send Copies of Orders to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1979, ch. 484, § 30 (enacted in lieu of 110.211).)

§ 110.220. Repealed by 1953, ch. 427, § 29.

§ 110.221. 1953, ch. 427, § 20; repealed by 1979, ch. 484, § 31 (110.222 enacted in lieu of 110.221).

§ 110.222. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its order and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court or the Department of Human Resources, as appropriate; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1979, ch. 484, § 32 (enacted in lieu of 110.221).)

§ 110.226. Duty of District Attorney When Order of Responding Court Cannot Be Enforced.

If enforcement of the court's order of support is impossible or cannot be completed by the court where the order was issued, the District Attorney of that county shall transmit a certified copy of the order to the District Attorney of any county in this State where it appears that procedures to enforce payment of the amount due would be effective. The District Attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1961, ch. 630, § 3.)

§ 110.230. Repealed by 1953, ch. 427, § 29.

§ 110.231. 1953, ch. 427, § 21; repealed by 1979, ch. 484, § 33 (110.232 enacted in lieu of 110.231).

§ 110.232. Duties of Responding Court Which May Be Delegated.

A responding court has the following duties which may be carried out through the clerk of the court or the Department of Human Resources, as appropriate:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1979, ch. 484, § 34 (enacted in lieu of 110.231).)

§ 110.240. Repealed by 1953, ch. 427, § 29.

§ 110.241. 1953, ch. 427, § 22; repealed by 1979, ch. 484, § 35 (110.242 enacted in lieu of 110.241).

§ 110.242. Duty of Initiating Court if Payments Received.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court or the Department of Human Resources, as appropriate.

HISTORY: (1979, ch. 484, § 36 (enacted in lieu of 110.241).)

§ 110.250. Repealed by 1953, ch. 427, § 29.

§ 110.251. Testimony of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife ar inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1953, ch. 427, § 23.)

Cases

An unwed mother in Oregon filed a Uniform Reciprocal Enforcement of Support Act petition seeking support for her minor daughter from the alleged father. The trial court found the respondent to be the father and awarded the mother $75 per month support. The Act authorizes a finding of paternity under Or.Rev.Stat. 110.201, which allows a responding court to find and enforce a duty of support where it has not been previously established in another proceeding. Further, the "duty of support" as defined in

Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022) included a duty of support imposed or imposable by law. This conclusion is supported by Or.Rev.Stat. 110.251, allowing or compelling husbands and wives to testify to any relevant matter in a proceeding under this chapter, including marriage and parentage. Clarkson v. Bridge, 539 P.2d 1094 (Or., 1975).

A father, required by a Washington divorce decree and property settlement agreement to pay $25 per month support for each of five children, asserted that the trial court erred when it did not allow interrogatories inquiring into the mother's financial status and related matters. Under Or.Rev.Stat. 110.021 (repealed and reenacted as Or.Rev.Stat. 110.022), Or.Rev.Stat. 110.031, and Or.Rev.Stat. 110.251, the only relevant matter in a petition filed under the Uniform Reciprocal Enforcement of Support Act is the duty to support, and the question to which the father sought answers were not relevant to that issue. State ex rel State of Washington v. Reed, 496 P.2d 58 (Or., 1972).

§ 110.260. Repealed by 1953, ch. 427, § 29.

§ 110.270. Repealed by 1953, ch. 427, § 29.

§ 110.271. 1953, ch. 427, § 24; repealed by 1979, ch. 484, § 37 (110.272 enacted in lieu of 110.271).

§ 110.272. Effect of Support Order on Prior Orders; Credit for Amount Paid.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1979, ch. 484, § 38 (enacted in lieu of 110.271).)

§ 110.275. Additional Remedies for Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in Or.Rev.Stat. 110.277 and 110.281.

HISTORY: (1979, ch. 484, § 43.)

§ 110.277. Registration of Foreign Support Order.

(1) The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes provided in this chapter.

(2) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(a) Three certified copies of the order with all modifications thereof;

(b) One copy of the reciprocal enforcement of support act of the State in which the order was made; and

(c) A statement verified and signed by the obligee, showing the post office address of the obligee, the last-known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them and the order shall be docketed in the judgment docket. The filing and docketing constitutes registration under this chapter.

(3) Promptly upon registration the clerk of the court shall notify the District Attorney of the support enforcement division, as appropriate, of the action. The appropriate prosecuting agent shall send promptly by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. The appropriate prosecuting agent shall proceed diligently to enforce the order.

HISTORY: (1979, ch. 484, §§ 44, 45.)

§ 110.281. Effect of Registration.

(1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If the obligor does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order the obligor may present only matters that would be available to the obligor as defenses in an action to enforce a foreign money judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of exection has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security of payment of the support ordered as required by the rendering State. If the obligor shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same securtiy for payment of the support ordered that is required for a support order of this State.

HISTORY: (1979, ch. 484, § 46.)

Cases

A former wife petitioned the court to register a California dissolution decree, to modify the decree by increasing the support duty of $75 per month for each of four children to $125 per month, and to extend the support period for those children between 18 and 21 years of age who were attending school full-time. Or.Rev.Stat. 107.108 authorizes an Oregon domestic relations court to provide for the support of children over 18 and under 21 who are attending school. California, however, has no provision for support of children over 18 years. Although the registered California decree was modifiable as an Oregon decree under Or.Rev.Stat. 110.135(1)(a) and 110.281(1), the "duty of support" is qualified under 110.022(3) by the express requirement that the other jurisdiction impose the same or substantially similar duty to support. Since California law does not provide for the support by the noncustodial parent of children over 18 and attending school, the Oregon court may not require support under those circumstances. In re Marriage of Tavares, 651 P.2d 133 (Or., 1982).

§ 110.291. Severability.

If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

HISTORY: (1953, ch. 427, § 25.)

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§ 6741. Short Title and Purposes of Subchapter.

(a) Short title.

This subchapter shall be known and may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)."

(b) Purposes.

The purposes of this subchapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Child support is equal responsibility of mother and father and both are obligated to contribute to the support of their children in accordance with their respective abilities to pay. Myers v. Young, 427 A.2d 209, 285 Pa.Super., 254, 1981.

While Pennsylvania courts did not in the past enforce foreign alimony awards under the Revised Uniform Reciprocal Enforcement of Support Act, they may now do so due to the enactment of the Divorce Code of April 2, 1980 (23 P.S. § 101 et seq.). Com. v. Mitchell, 15 D. & C.3d 70, 1980.

The purpose of support statute is not to create new rights but to provide a procedure for enforcing existing rights. Com. ex rel. Platt v. Platt, 323 A.2d 29, 227 Pa.Super., 423, 1974.

§ 6742. Definitions.

The following words and phrases when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"COURT." The Courts of Common Pleas in this Commonwealth and when the context requires, the court of any other State as defined in a substantially similar reciprocal law.

"DUTY OF SUPPORT." A duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

"GOVERNOR." Includes any person performing the functions of Governor or the executive authority of any State covered by this subchapter.

"INITIATING COURT." The court in which a proceeding is commenced.

"INITIATING STATE." A State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

"LAW." Includes both common and statutory law.

"OBLIGEE." A person to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

"OBLIGOR." Any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

"PROSECUTING ATTORNEY." The public official in the appropriate place who has the duty to enforce laws relating to the failure to provide for the support of any person.

"REGISTER." To record in the Registry of Foreign Support Orders.

"REGISTERING COURT." Any court of this Commonwealth in which a support order of a rendering State is registered.

"RENDERING STATE." A State in which the court has issued a support order for which registration is sought or granted in the court of another State.

"RESPONDING COURT." The court in which a responsive proceeding is commenced.

"RESPONDING STATE." A State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced.

"STATE." Includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

"SUPPORT ORDER." Any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6743. Remedies Additional to Those Now Existing.

The remedies provided in this subchapter are in addition to and not in substitution for any other remedies.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6744. Extent of Duties of Support.

Duties of support arising under the law of this Commonwealth, when applicable under § 6747 (relating to choice of law), bind the obligor present in this Commonwealth regardless of the presence or residence of the obligee.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

A Pennsylvania court has jurisdiction under 18 Pa. C.S.A. § 4322 and under §§ 6704 and 6750 of this title and this section, over a support proceeding involving a child residing within its jurisdiction, even though the defendant is a resident of another State. Com. v. Klimen 10 D.&C.3d 256, 1979.

The custodial parent is not entitled to an order of support against the noncustodial parent until such time as the whereabouts of the children are furnished to the latter. Com. v. Shaffer, 90 York 130, 1976.

Since in Pennsylvania, there was no duty of support owed to a divorced wife by her former husband, where the respondent was a resident of Pennsylvania at the time a proceeding under Uniform Reciprocal Enforcement of Support Act (repealed) was brought the petitioner-wife could not recover support for herself. Com. v. Ladue, 13 Adams L.J. 202, 1972.

Since it is now established that the support of illegitimate children is one of the duties of support imposable under the laws of Pennsylvania, the support of illegitimate children is a duty of support enforceable under the Uniform Reciprocal Enforcement of Support Act. Com. v. Beamer, 10 Adams L.J. 117, 1968.

§ 6745. Interstate Rendition.

The Governor of this Commonwealth may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this Commonwealth with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this Commonwealth who is charged criminally in that State with failing to provide for the support of any person.

Provisions for extradition of criminals not inconsistent with this subchapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not State or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Construction and application.

In a proceeding under the Uniform Reciprocal Enforcement of Support Act (repealed) where it appeared the parties were divorced and had two minor children and petitioner sought support for herself as well as the children, an order having been entered by a court of New York State which provided that respondent pay a monthly sum for the wife's support and likewise a sum for each child, petitioner was not entitled to support under 62 P.S. § 2043.7 (repealed) respondent having been present within the Commonwealth during the period for which her support was sought, since in Pennsylvania no duty of support exists after divorce. Com. v. Ladue, 55 D.&C.2d 216, 13 Adams L.J. 202, 1972.

Merely because there was an existing order in some other jurisdiction did not bar a proceeding for support under the provisions of 62 P.S. § 2043.7 (repealed). Id.

§ 6746. Conditions of Interstate Rendition.

(a) Obligor in another State.

Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this Commonwealth with failing to provide for the support of a person, the Governor of this Commonwealth may require any prosecuting attorney of this Commonwealth to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this subchapter or that the initiation of any proceeding would be of no avail.

(b) Obligor in this Commonwealth.

If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this Commonwealth for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be eff. but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) Effect of support proceedings.

If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6747. Choice of Law.

Duties of support applicable under this subchapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought.

The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Where father became domiciliary of Pennsylvania sometime following his Virginia divorce, continued to reside in Commonwealth, and availed himself of Commonwealth's judicial system, father, as resident of Commonwealth, fell directly within purview of this section, and thus, Pennsylvania law governed action by father seeking termination of support for daughter upon her 18th birthday. Oman v. Oman, 482 A.2d 606 (Pa., 1984).

Petition for modification of support order, initiated in Virginia but transferred by the Virginia court to Pennsylvania under the Revised Uniform Reciprocal Enforcement of Support Act, was governed by the law of Pennsylvania as the obligor's present domicile. Chrzanowski v. Chrzanowski 472 A.2d 1128 (Pa., 1984).

Application of the full faith and credit clause to the child support provisions of the Virginia divorce decree was limited to the extent that the provisions were modifiable and therefore lacking in the requisite finality and meant that the court in Pennsylvania modification proceeding was to give full faith and credit to the determination of issues by the Virginia court which would not be proper grounds for modification of the order in Pennsylvania. Id.

Defendant was precluded from relitigating child's paternity in Pennsylvania modification proceeding following entry of child support provision in Virginia divorce proceeding by defendant's long delay in raising issue at all and by his acceptance and support of child from time she was born to plaintiff. Id.

§ 6748. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this subchapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

The Department of Public Welfare was entitled to reimbursement from an assistance recipient on account of a lump-sum Social Security award to a member of the recipient's family where the recipient had agreed to reimburse the Department for assistance granted to the family. Department of Public Welfare v. Early, 92 Dauph. 385, 1970.

A Social Security payment deposited and credited to a recipient's bank account has lost its identity as a Social Security benefit and may be attached by the Commonwealth to satisfy a claim for reimbursement of public assistance. Id.

The Federal exemption of Social Security benefits from claims of creditors does not apply to the Commonwealth's claim for reimbursement for assistance granted especially where there was an agreement to repay the Commonwealth. Furthermore, such exemption applied only to future benefits and not accrued payments. Id.

§ 6749. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this subchapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Order requiring natural father to pay specified sum on account of arrearages in child support and post compliance bond plus specified sums for support and maintenance on his release from confinement was in compliance with provisions of the Revised Uniform and Reciprocal Enforcement of Support Act requiring statement of conditions which, if fulfilled, will cause civil contemnor's immediate release from prison. Barrett v. Barrett, 352 A.2d 74, 237 Pa.Super. 590, 1975, reversed on other grounds 368 A.2d. 616, 470 Pa. 253.

Orders holding natural father in civil contempt for failure to comply with support orders were deficient as failing to expressly limit maximum term of imprisonment to not more than six months; however, such fact did not warrant a reversal since the Superior Court had power to modify the order by incorporating the omitted provision. Id.

§ 6750. Jurisdiction.

Jurisdiction of any proceeding under this subchapter is vested in the Courts of Common Pleas.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

A Pennsylvania court has jurisdiction under 18 Pa. C.S.A. § 4322 and under §§ 6704 and 6744 of this title and this section, over a support proceeding involving a child residing within its jurisdiction, even though the defendant is a resident of another State. Com. v. Klimen, 10 D.&C.3d 256, 1979.

§ 6751. Petition for Support.

(a) Contents.

The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor, the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) Filing.

The petition may be filed in the appropriate court of any State in which the obligor resides. The court may decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Fact that daughter had attained the age of 18 did not end the father's duty of support and did not dislodge the jurisdiction which originally attached to the trial court upon entry of initial support order. Com. ex rel. Leider v. Leider, 484 A.2d 117 (Pa., 1984).

§ 6752. Officials To Represent Obligee.

If this Commonwealth is acting as an initiating State the prosecuting attorney upon the request of the court, or a Commonwealth or local welfare official shall represent the obligee in any proceeding under this subchapter. If the prosecuting attorney neglects or refuses to represent the obligee, the Department of Public Welfare may undertake the representation.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6753. Petition for A Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Fact that daughter had attained the age of 18 did not end the father's duty of support and did not dislodge the jurisdiction which originally attached to the trial court upon entry of initial support order. Com. ex rel. Leider v. Leider 484 A.2d 117 (Pa., 1984).

§ 6754. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the petition and its certificate and one copy of this subchapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6755. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and all fees and costs incurred in this Commonwealth when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6756. Jurisdiction by Arrest.

(a) General rule.

If the court of this Commonwealth believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing. When the obligor is detained for the hearing, the hearing shall be held within 15 days from the date of arrest. The court may compel the attendance at a hearing by attachment process directed to the sheriff or other proper officer of the county directing and commanding that the obligor be brought before the court at such time as the court may direct. If the court, whenever an attachment is issued in any county as provided in this paragraph, shall find after hearing that the obligor has willfully neglected or refused to comply with any order of the court, the court may adjudge such person in contempt of court and, in its discretion, may commit such person to the county jail or house of correction until compliance with such order, but in no case for a period exceeding six months. The court

in its order shall state the condition upon which fulfillment will result in the release of the obligor.

(b) Philadelphia cases.

In the first judicial district the obligor shall be brought before the court forthwith, but in any event within 48 hours or two court working days, whichever is the longer from the time the obligor is taken in custody pursuant to the attachment; at which time, if the court shall find, after hearing, that the obligor is about to leave the jurisdiction, the court may direct that he give security, by one or more sureties, to appear when directed by the court, or to comply with any order of court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6757. State Information Agency.

(a) General rule.

The Department of Public Welfare is designated as the State Information Agency under this subchapter. It shall:

(1) Compile a list of the courts and their addresses in this Commonwealth having jurisdiction under this subchapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the General Assembly the agency shall distribute copies of any amendments to this subchapter and a statement of their eff. date to all other State Information Agencies.

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this Commonwealth having jurisdiction under this subchapter.

(3) Forward to the court in this Commonwealth which has jurisdiction over the obligor or his property petitions, certificates and copies of the laws it receives from courts or information agencies of other States.

(b) Inquiry for obligor.

If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) Department of Public Welfare prosecution.

After the deposit of three copies of the petition and certificate and one copy of the law of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the

case diligently it shall inform the Department of Public Welfare, who may undertake the representation.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6758. Duty of the Court and Officials of this Commonwealth as Responding State.

(a) Docketing and notice.

After the responding court receives copies of the petition, certificate and law from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) District Attorney prosecution.

The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this Commonwealth to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) Department of Public Welfare prosecution.

If the prosecuting attorney neglects or refuses to represent the obligee, the Department of Public Welfare may undertake the representation.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6759. Further Duties of Court and Officials of Responding State.

(a) General rule.

The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) Forwarding of documents.

If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this Commonwealth or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court.

All powers and duties provided by this subchapter apply to the recipient of the documents so forwarded. If the clerk of a court of this Commonwealth forwards documents to another court he shall forthwith notify the initiating court.

(c) Notice of no information.

If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6760. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Where respondent received a month's notice in writing of a hearing upon a proposed order to pay alleged arrearages, filed no answer to the petition, but appeared in person at the hearing orally to protest the entry of the order, was advised by the court to obtain counsel and informed of where he could obtain free counsel if he should be indigent, but nothing further was done on his behalf until the filing after another month of a petition to vacate the order, the court found the application untimely, and refused to modify, subject to respondent's right to apply to the court of the forwarding State to open its judgment on the basis of defenses alleged. Com. v. Sydnor, 67 D.&C.2d 152, 1974.

Where a petition filed in the court of another State and forwarded to a Pennsylvania court pursuant to provisions of 62 P.S. § 2043.20 (repealed) alleged petitioner was the mother and respondent was the father of a minor child born out of wedlock for which petitioner sought an order against defendant for support, and where defendant denied paternity and demanded a jury trial, his request would be granted, especially since defendant in similar proceedings under former § 2043.20, would have the right to demand a jury trial, and since such procedure would maintain a desirable uniformity, absent any express or implied intention to the contrary in the Uniform Reciprocal Enforcement of Support Act (repealed). Com. ex rel. Franz v. Zaengle, 53 D.&C.2d 382, 34 Leh.L.J. 355, 1971.

§ 6761. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6762. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this subchapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6763. Rules of Evidence.

In any hearing for the civil enforcement of this subchapter the court is governed by the rules of evidence applicable in a civil matter in the court of common pleas. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor under § 6767 (relating to paternity) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6764. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this subchapter shall require that payments be made to the clerk of the court of the responding State, or to other officer designated by the court. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Order requiring natural father to pay specified sum on account of arrearages in child support and post compliance bond plus specified sums for support and maintenance on his release from confinement was in compliance with provisions of the Revised Uniform Reciprocal Enforcement of Support Act requiring statement of conditions which, if fulfilled, will cause civil contemnor's immediate release from prison. Barrett v. Barrett, 352 A.2d 74, 237 Pa.Super. 590 1975, reversed on other grounds 368 A.2d 616, 470 Pa. 253.

Where respondent received a month's notice in writing of a hearing upon a proposed order to pay alleged arrearages, filed no answer to the petition, but appeared in person at

the hearing, orally to protest the entry of the order, was advised by the court to obtain counsel and informed of where he could obtain free counsel if he should be indigent, but nothing further was done on his behalf until the filing after another month of petition to vacate the order, the court found the application untimely, and refused to modify, subject to respondent's right to apply to the court of the forwarding State to open its judgment on the basis of defenses alleged. Com. v. Sydnor, 67 D.&C.2d 152, 1974.

Foreign support orders.

Virginia child support decree entered into pursuant to divorce was not a final judgment, but rather, was modifiable, at time father petitioned for termination of child support for daughter as of her 18th birthday, since daughter was not 18 years old at time action was filed and since Virginia statute authorized modification of child support order at any time, if circumstances warranted; therefore, Pennsylvania was not required to extend full faith and credit to Virginia decree, even though Virginia would not recognize noncontractual duty of support for college education. Oman v. Oman, 482 A.2d 606 (Pa., 1984).

Even if Virginia divorce decree providing for termination of child support when children reached age of 18 was final, enforcement of such decree would be in direct contravention of Commonwealth policy that children should be entitled to receive financial support for college education, providing assistance does not constitute financial hardship upon parents; therefore, full faith and credit would not be given to decree and laws of Pennsylvania would apply in determining child's right to such support. Id.

Where monthly support order was entered in Ohio prior to parties' divorce in Pennsylvania at a time when there was no obligation to pay post marital support, former wife could not enforce her support order in Pennsylvania under the Revised Uniform Reciprocal Enforcement of Support Act. Gilham v. Gilham, 475 A.2d 829 (Pa., 1984).

To be entitled to recognition and enforcement in other States a foreign decree for support of children must be final judgment for a fixed sum; however, the full faith and credit clause (U.S.C.A. Const. art. 4, § 1) does protect the right to child support payments that have already accrued under the order and are not retroactively modifiable under the law of the foreign State. Silverstein v. Silverstein, 371 A.2d 948, 246 Pa.Super. 503, 1977.

Consideration of comity and fairness to the parties required that in computing husband's arrearages under Pennsylvania child support order, amounts paid by former husband pursuant to Florida child support orders were to be credited against amounts accruing for the same period under the Pennsylvania support order. Id.

Full faith and credit clause (U.S.C.A. Const. art. 4, § 1) did not require vacation of prior Pennsylvania support order and remission of arrearages due thereunder, notwithstanding that subsequent Florida divorce decree included provisions for child support, since the Florida decree was subject to modification and was not a final judgment required to be enforced in Pennsylvania; however, although Pennsylvania courts could prospectively modify the Florida support order on a showing of change of circumstances Pennsylvania courts could not defeat any right to payments accrued thereunder. Id.

Where father earned $32,000 per year, mother earned $17,000 per year, and daughter attending college earned $1,875 per year and needed $4,245 for college expenses per year, it was an abuse of discretion for court to order the father to pay $100 per week to the daughter in light of New Jersey order requiring that father pay $3,080 per year toward the daughter's support and education and $60 per week alimony for his wife. Id.

The wife's separate earnings are to be considered in determining a support order for a child attending college and the child's earnings should also be taken into consideration. Com. ex rel. Platt v. Platt, 323 A.2d 29, 227 Pa.Super. 423, 1974.

In a proceeding brought in a responding State under the Uniform Reciprocal Support Law, Pennsylvania will not recognize a foreign court order so far as it pertains to alimony for the wife. Id.

In fixing the amount of support for the children the court is not limited by the New York order. Com. v. Ladue, 55 D.&C.2d 216, 13 Adams L.J. 202, 1972.

In fixing the amount of an order to be entered under 62 P.S. § 2043.22 (repealed), the court was not limited by a previous order of the State supreme court of New York and may make an independent determination. Id.

Where defendant was before the court in person and was employed where the court had the power to enforce an order by wage attachment, the court has jurisdiction to amend its prior order and was not bound by the contrary action of a foreign court. Com. v. Gumbert, 53 Wash. 65, 1972.

The doctrine of modification of support order is applicable to a support order entered by a sister State and registered in Pennsylvania pursuant to the Uniform Reciprocal Enforcement of Support Act. Com. ex rel. Thomas v. Thomas, 95 Montg. 147, 1971.

Under the Uniform Reciprocal Enforcement of Support Act (repealed) courts in responding State had power to make independent order fixing amount of support different from that called for by recommendation of initiating State, and in so doing, law of responding State was controlling. Com. ex rel. Byrne v. Byrne, 243 A.2d 196, 212 Pa.Super. 566, 1968.

Where a support order had been entered in favor of the wife in Delaware County and subsequently the husband obtained an Alabama decree which directed payment of alimony, the Pennsylvania support order was revoked and in addition the alimony decree would not be enforced because 62 P.S. § 2043.22 (repealed), required enforcement of a foreign support order only if the responding State found a duty of support. Pennsylvania law did not recognize a duty of support after divorce. Com. ex rel. McDonald v. McDonald, 55 Del. 411, 1968.

Visitation.

In proceeding under Revised Uniform Reciprocal Enforcement of Support Act, refusal to defer entry of order of support until satisfactory visitation rights had been established was proper. Myers v. Young, 427 A.2d 209, 285 Pa.Super. 254, 1981.

Presumptions and burden of proof.

The Uniform Reciprocal Enforcement of Support Act (repealed) placed the burden upon the Commonwealth to prove the essential facts within the statutory provisions one being the obligation of respondent to support named dependents. Com. ex rel. O'Hara v. O'Hara, 18 Bucks 448, 1968.

§ 6765. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6766. Additional Powers of Responding Court.

In addition to the foregoing powers set forth in this subchapter a responding court may subject the obligor to any terms and conditions proper to assure compliance with its order and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due.

(2) Require the obligor to report personally and to make payments at specific intervals to the clerk of the court, or to other officer designated by the court.

(3) Punish under the power of contempt the obligor who violates any order of the court. No such punishment shall be administered until the court shall find, after hearing, that the violation was willful.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6767. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Where respondent signed an affidavit acknowledging both paternity of a child and his legal obligation to support the child, and where an unappealed court order for support was entered against respondent, the issue of respondent's paternity became res judicata. O'Hara v. Phillips, 19 D.&C.3d 368 (1980).

Where a court entered an order against respondent for child support and respondent did not appeal from said order, the fact of respondent's paternity of minor child became established as a matter of law. Id.

Trial court's order finding paternity had to be reversed and the matter remanded for new trial, where no stenographic notes were taken of the testimony as required by 17 P.S. § 1804 (repealed). Mansfield v. Lopez, 432 A.2d 1016, Pa.Super. 1981.

Generally, a finding of paternity without an order to pay support is interlocutory. Jackson v. Moultrie, 431 A.2d 1033, Pa.Super. 1981.

Since order of Court of Common Pleas finding paternity but not directing defendant to pay support granted plaintiff all relief she sought, it disposed of the entire case and was final and appealable. Id.

Where mother filed civil petition for support against alleged father and thereafter filed a criminal complaint charging alleged father with neglect to support a child born out of lawful wedlock, the criminal action was filed prior to amendment abolishing criminal actions to determine paternity, and the criminal action was subsequently dismissed pursuant to alleged father's application, case law prior to eff. date of the amendment was applicable and civil court was without jurisdiction to determine paternity. Id.

Putative father's declaratory judgment petition asserting "possibility" of his paternity was insufficient and should have alleged paternity, not the possibility of it; declaration that putative father was the "possible" father of the child would not end uncertainty as to whether he was the boy's father. In re Mengel, 429 A.2d 1162, Pa.Super. 1981.

Putative father had standing to obtain declaratory judgment of his paternity where granting declaratory judgment would terminate uncertainty giving rise to proceeding, this section providing for adjudication of paternity in support actions was no aid to putative father, and, even if putative father could obtain adjudication of his paternity in support action or issue of paternity might be raised in another type of action, availability of such a remedy was no longer bar to granting of declaratory judgment. Id.

§ 6768. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court, or other officer designated by the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise.

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6769. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court, or other officer designated by the court.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

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§ 6770. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this subchapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this Commonwealth or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must take into account in placing its support order the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Suspension of Virginia order of support until satisfactory visitation rights were arranged did not preclude entry of support order by court in Pennsylvania under Revised Uniform Reciprocal Enforcement of Support Act, particularly in view of fact that the Virginia order, which set off the father's right to visitation against his duty to support his children, was inconsistent with policy announced by Pennsylvania cases. Myers v. Young, 427 A.2d 209, 285 Pa.Super. 254, 1981.

Under Revised Uniform Reciprocal Enforcement of Support Act, courts of State entering order of support after order has been entered in another State must take into account amount of order entered by initial State, but Act does not require parties who no longer reside in State where initial order was entered to return to courts of such State in order to obtain enforcement of a parent's duty to support a child. Id.

Revised Uniform Reciprocal Enforcement of Support Act did not intend an order of support entered in one State to act as a bar to the entry of an order in another State having jurisdiction. Id.

§ 6771. Application of Payments.

A support order made by a court of this Commonwealth pursuant to this subchapter does not nullify and is not nullified by a support order made by a court of this Commonwealth pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this Commonwealth.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Construction and application.

Even if Virginia divorce decree providing for termination of child support when children reached age of 18 was final, choice of law section of Revised Uniform Reciprocal Enforcement of Support Act dictated application of Pennsylvania law to determine whether mother was entitled to support for 18-year-old daughter's college education, since unambiguous language of statute left no doubt that legislature intended courts of Commonwealth to review any support order, modifiable or final, brought within jurisdiction. Oman v. Oman, 482 A.2d 606 (Pa., 1984).

Revised Uniform Reciprocal Act did not provide divorce mother, who petitioned for modification of child support, with exclusive remedy, and thus her outstanding reciprocal petition did not foreclose full evidentiary hearing on merits of modification petition. Com. ex rel. McClelland v. McClelland, 450 A.2d 58 (Pa., 1982).

Under Revised Uniform Reciprocal Enforcement of Support Act, courts of State entering order of support after order has been entered in another State must take into account amount of order entered by initial State, but Act does not require parties who no longer reside in State where initial order was entered to return to courts of such State in order to obtain enforcement of a parent's duty to support a child. Myers v. Young, 427 A.2d 209, 285 Pa.Super. 254, 1981.

Suspension of Virginia order of support until satisfactory visitation rights were arranged did not preclude entry of support order by court in Pennsylvania under Revised Uniform Reciprocal Enforcement of Support Act, particularly in view of fact that the Virginia order, which set off the father's right to visitation against his duty to support his children, was inconsistent with policy announced by Pennsylvania cases. Id.

Full faith and credit clause (U.S.C.A. Const. art. 4, § 1) did not require vacation of prior Pennsylvania support order and remission of arrearages due thereunder, notwithstanding that subsequent Florida divorce decree included provisions for child support, since the Florida decree was subject to modification and was not a final judgment required to be enforced in Pennsylvania; however, although Pennsylvania courts could prospectively modify the Florida support order on a showing of change of circumstances Pennsylvania courts could not defeat any right to payments accrued thereunder. Silverstein v. Silverstein, 371 A.2d 948, 246 Pa.Super. 503, 1977.

Considerations of comity and fairness to the parties required that in computing husband's arrearages under Pennsylvania child support order, amounts paid by former husband pursuant to Florida child support orders were to be credited against amounts accruing for the same period under the Pennsylvania support order. Id.

§ 6772. Effect of Participation in Proceeding.

Participation in any proceeding under this subchapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Trial court properly refused to recognize action of Pennsylvania court which purported to modify Kentucky support order in regard to parties' younger son for periods when he was living in Pennsylvania with his father, where mother's petition to Pennsylvania court sought enforcement of support order under Uniform Reciprocal Enforcement of Support Act, where she was asking for enforcement of support only as to older, handicapped son, and where she did not subject herself to jurisdiction of Pennsylvania court for an independent action by father relating to his support obligation for younger son. Abbott v. Abbott, 673 S.W.2d 723 (Ky., 1983).

§ 6773. Intrastate Application.

This subchapter applies if both the obligee and the obligor are in this Commonwealth but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this Commonwealth may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this Commonwealth as a responding State.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Where mother, petitioner for child support, resided in different county than respondent father who was within same State as petitioner, 62 P.S. §§ 2043.42 and 2043.35 (both repealed) mandated that county in which respondent resided was county of proper venue and initiating county should have transferred action to that county. Com. ex rel. Powell v. Powell, 357 A.2d 566, 238 Pa.Super. 369. 1976.

§ 6774. Appeals.

(a) By Department of Public Welfare. If the Department of Public Welfare is of the opinion that a support order is erroneous, or inadequate, or presents a question of law warranting an appeal in the public interest, it may:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this Commonwealth; or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State.

In either case expenses of appeal taken by such Department may be paid from funds appropriated to the Department of Public Welfare.

(b) By obligee. In the event the Department of Public Welfare fails or refuses to file an appeal on behalf of the obligee, such obligee may file such appeal as provided in subsection (a)(1) and (2).

(c) By obligor. The obligor shall have the right to file an appeal to the proper appellate court if the support order was issued by a court of this Commonwealth, or may cause the appeal to be taken in the other State, if the support order was issued in another State.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

Cases

Construction and application.

Reviewing court can reverse a support order only if it finds that the order cannot be sustained on any valid ground. Shovlin v. Shovlin, 465 A.2d 673 (Pa., 1983).

A reviewing court will overrule a trial court's determination of a child support order only in the event of a clear abuse of discretion. Com. ex rel. Platt v. Platt, 323 A.2d 29, 227 Pa.Super. 423, 1974.

§ 6775. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections of this subchapter.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6776. Registration.

The obligee may register the foreign support order in a court of this Commonwealth in the manner, with the effect, and for the purposes provided in this subchapter.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6777. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6778. Official To Represent Obligee.

(a) General rule.

If this Commonwealth is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, or a Commonwealth or other local welfare official, shall represent the obligee in proceedings under this subchapter.

(b) Department of Public Welfare Prosecution.

If the prosecuting attorney neglects or refuses to represent the obligee, the Department of Public Welfare may undertake the representation.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6779. Registration Procedure.

(a) General rule.

An obligee seeking to register a foreign support order in a court of this Commonwealth shall transmit to the clerk of the court:

(1) One certified copy of the order with all modifications thereof.

(2) One copy of the reciprocal enforcement of support law of the State in which the order was made.

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a recording fee or other cost to the obligee, shall record them in the registry of foreign support orders. The recording constitutes registration under this subchapter.

(b) Notice.

Within ten days after the registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

§ 6780. Effect and Enforcement of Registered Order.

(a) Effect.

Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this Commonwealth. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this Commonwealth and may be enforced and satisfied in like manner.

(b) Challenge to order.

The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) Procedure.

At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this Commonwealth may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this Commonwealth.

HISTORY: (1976, July 9, P.L. 586, No. 142, § 2, eff. June 27, 1978.)

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PUERTO RICO

32 LAWS P.R. ANN. §§ 3311 to 3313

Subchapter I. General Provisions

§ 3311. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (June 20, 1956, No. 71, p. 308, § 1, eff. June 20, 1956.)

§ 3311a. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the superior court of Puerto Rico, and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" or "ACT" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means any person to whom a duty of support is owed.

HISTORY: (June 20, 1956, No. 71, p. 308, § 2, eff. June 20, 1956.)

§ 3311b. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (June 20, 1956, No. 71, p. 308, § 3, eff. June 20, 1956.)

§ 3311c. Extent of Duties of Support.

Duties of support arising under the laws of Puerto Rico, when applicable under § 3313 of this title, bind the obligor, present in Puerto Rico, regardless of the presence or residence of the obligee.

HISTORY: (June 20, 1956, No. 71, p. 308, § 4, eff. June 20, 1956.)

Subchapter II. Criminal Enforcement

§ 3312. Interstate Rendition.

The Governor of Puerto Rico may (1) demand from the Governor of any other State the surrender of any person found in such other State who is charged in Puerto Rico with the crime of failing to provide for the support of any person in Puerto Rico and (2) may surrender, on demand by the Governor of any other State, any person found in Puerto Rico who is charged in such other State with the crime of failing to provide for the support of a person in such other State. The provisions for the extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded had fled from justice, or at the time of the commission of the crime was in the demanding State or in the State from which extradition is demanded.

HISTORY: (June 20, 1956, No. 71, p. 308, § 5, eff. June 20, 1956.)

§ 3312a. Relief from the Above Provisions.

Any obligor contemplated by § 3312 of this title, who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of Puerto Rico during the period of such compliance.

HISTORY: (June 20, 1956, No. 71, p. 308, § 6, eff. June 20, 1956.)

Subchapter III. Civil Enforcement

§ 3313. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (June 20, 1956, No. 71, p. 308, § 7, eff. June 20, 1956.)

§ 3313a. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever a State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (June 20, 1956, No. 71, p. 308, § 8, eff. June 20, 1956.)

§ 3313b. How Duties of Support Are Enforced.

All duties of support are enforceable by judicial action irrespective of relationship between the obligor and obligee. Exclusive jurisdiction of all proceedings hereunder shall be vested in the superior court of Puerto Rico.

HISTORY: (June 20, 1956, No. 71, p. 308, § 9, eff. June 20, 1956.)

§ 3313c. Contents of Complaint for Support.

The complaint shall be under oath or affirmation and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant, his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant, including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name and address of his employer, his fingerprints, and his Social Security number.

HISTORY: (June 20, 1956, No. 71, p. 308, § 10, eff. June 20, 1956.)

§ 3313d. Official To Represent the Plaintiff.

The prosecutor, at the request of the plaintiff, shall represent him in any proceeding under this chapter.

HISTORY: (June 20, 1956, No. 71, p. 308, § 11, eff. June 20, 1956.)

§ 3313e. Complaint for a Minor.

A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (June 20, 1956, No. 71, p. 308, § 12, eff. June 20, 1956.)

§ 3313f. Duties of Court of Puerto Rico as Initiating State.

If the court of Puerto Rico, acting as an initiating State, finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his

property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate and (3) this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in § 3313i of this title, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (June 20, 1956, No. 71, p. 308, § 13, eff. June 20, 1956; Act May 9, 1951, No. 390, p. 966, § 11; 32 L.P.R.A. former § 3295.)

§ 3313g. Costs and Fees.

A court of Puerto Rico acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in Puerto Rico, including among others, service of process, seizure of property, and stenographic service of both complainant and defendant, or either, be paid by the Commonwealth of Puerto Rico. Where the action is brought in Puerto Rico there shall be no filing fee.

HISTORY: (June 20, 1956, No. 71, p. 308, § 14, eff. June 20, 1956.)

§ 3313h. Jurisdiction by Arrest.

When the court of Puerto Rico, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or (b) as a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (June 20, 1956, No. 71, p. 308, § 15, eff. June 20, 1956.)

§ 3313i. State Information and Reception Agency.

The Office of Court Administration of Puerto Rico, in San Juan, Puerto Rico, created by Act No. 11, approved July 24, 1952, § 1 et seq. of Title 4, is hereby designated as an agency of information and reception of Puerto Rico under this chapter, and it shall be the duty of said agency:

(1) To receive, in cases where the Commonwealth of Puerto Rico is the responding State, the documents transmitted by the initiating State and forward same to the pertinent part of the court for proper action hereunder.

(2) To maintain a register of the lists of the courts with jurisdiction received from other States and transmit same as soon as possible after receipt to every part of the court.

Subd. (1) of this section shall not be construed as depriving any court of authority to proceed in accordance herewith in case it receives directly the documents of a case transmitted by the initiating State.

HISTORY: (June 20, 1956, No. 71, p. 308, § 16, eff. June 20, 1956.)

§ 3313j. Duties of the Court of Puerto Rico as a Responding State.

Where Puerto Rico is the responding State, when the court of Puerto Rico receives the aforesaid certified copies, it shall (1) docket the case, (2) notify the prosecutor charged with the duty of carrying on the proceedings, (3) set a time and place for a hearing, and (4) take such action as is necessary under applicable laws to obtain jurisdiction.

HISTORY: (June 20, 1956, No. 71, p. 308, § 17, eff. June 20, 1956.)

§ 3313k. Duties of the Court of Puerto Rico Where Complaint Insufficient.

If a court of Puerto Rico acting as a responding State is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in or insufficiency of complaint or otherwise, the court shall communicate this fact to the court in the initiating State, and shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating State.

HISTORY: (June 20, 1956, No. 71, p. 308, § 18, eff. June 20, 1956.)

§ 3313l. Procedure.

The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

HISTORY: (June 20, 1956, No. 71, p. 308, § 19, eff. June 20, 1956.)

§ 3313m. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefore and subject the property of the defendant to such order.

HISTORY: (June 20, 1956, No. 71, p. 308, § 20, eff. June 20, 1956.)

§ 3313n. Responding State To Transmit Copies to Initiating State.

The court of Puerto Rico when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (June 20, 1956, No. 71, p. 308, § 21, eff. June 20, 1956.)

§ 3313o. Additional Powers of Court of Puerto Rico.

In addition to the foregoing powers, the court of Puerto Rico when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its order and, in particular:

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the secretary of the court or directly to the obligee and to report personally to such secretary of the court at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (June 20, 1956, No. 71, p. 308, § 22, eff. June 20, 1956.)

§ 3313p. Additional Duties of Court of Puerto Rico When Acting as a Responding State.

The court of Puerto Rico when acting as a responding State shall have the following duties which may be carried out through the secretary of the court or the probational officer:

(a) Upon the receipt of a payment made by the defendant pursuant to any other of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(b) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (June 20, 1956, No. 71, p. 308, § 23, eff. June 20, 1956.)

§ 3313q. Additional Duty of Court of Puerto Rico When Acting as an Initiating State.

When Puerto Rico is acting as an initiating State the court shall have the duty which may be carried out through the secretary of the court or the probational officer to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State. The Court Administrative Director, or his designee, is hereby authorized to endorse and deposit in a special bank account under his custody, all checks, drafts and other negotiable instruments which by virtue of this chapter are in the possession of or may be received in the Office of Court Administration and which are drawn to the Court Administrative Director, or to any other officer or employee of said office, or where the beneficiary cannot be identified or his address ascertained, or where the address of the drawer or the origin of such securities is unknown, or for any other cause. The Court Administrative Director is also hereby authorized to draw against said account so as to tend to claims from persons to whom the said securities belong; provided, that the Court Administrative Director shall prescribe the necessary rules and regulations

to carry out the purposes of this section; provided, further, that to the special bank account authorized by this section shall apply the provisions of §§ 363 and 364 of Title 4 in connection with balances which have heretofore remained or may hereafter remain completely inactive in the said special bank account for a period of five (5) years or more.

HISTORY: (June 20, 1956, No. 71, p. 308, § 24, eff. June 20, 1956; June 18, 1965, No. 40, p. 79, eff. June 18, 1965.)

§ 3313r. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (June 20, 1956, No. 71, p. 308, § 25, eff. June 20, 1956.)

§ 3313s. Rules of Evidence.

In any hearing under this chapter the rules of evidence shall be applied most liberally.

HISTORY: (June 20, 1956, No. 71, p. 308, § 26, eff. June 20, 1956.)

§ 3313t. Application of Payments

Any order of support issued by the court of Puerto Rico when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (June 20, 1956, No. 71, p. 308, § 27, eff. June 20, 1956.)

§ 3313u. Effect of Participation in Proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (June 20, 1956, No. 71, p. 308, § 28, eff. June 20, 1956.)

§ 3313v. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of said provision to persons or circumstances other than those as to which it has been held invalid shall not be affected thereby.

HISTORY: (June 20, 1956, No. 71, p. 308, § 29, eff. June 23, 1956.)

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§ 15-11-1. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

Cases

Constitutionality.

The reciprocal provisions of the Uniform Reciprocal Enforcement of Support Act do not violate Art. I, § 10, cl. 3 of the United States Constitution. Fraser v. Fraser,---R.I.---, 415 A.2d 1304 (1980).

Effect of prior support order.

A support order entered pursuant to a divorce proceeding does not bar under the doctrine of res judicata a subsequent action for support under the Uniform Reciprocal Enforcement of Support Act. Tetreault v. Tetreault, ---R.I.---, 381 A.2d 1049 (1978).

§ 15-11-2. Definitions.

(a) "COURT" means the family court of this State and when the context requires the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(i) "REGISTER" means to record or file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possesssion of the United States, the District of Columbia, and Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-3. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

Cases

Effect of prior support order.

A support order entered pursuant to a divorce proceeding does not bar under the doctrine of res judicata a subsequent action for support under the Uniform Reciprocal Enforcement of Support Act. Tetreault v. Tetreault,---R.I.---, 381 A.2d 1049 (1978).

The legislature contemplated the application of the Uniform Reciprocal Enforcement of Support Act where a divorce action was pending or concluded between the parties, even where, pursuant to that divorce action, provision for child support has been made. Id.

Marriage entered in good faith.

Where the women entered into marriage with the defendant in good faith, believing him divorced from his wife when in fact he was not, the child of such purported marriage was legitimate notwithstanding the void status of the marriage and support of such child

by its father could be enforced under reciprocal enforcement of support provisions. Bernier v. Bernier, 101 R.I. 697, 227 A.2d 112 (1967).

§ 15-11-4. Duties Binding Regardless of Obligee's Residence.

Duties of support arising under the law of this State, when applicable under § 15-11-7, bind the obligor present in this State regardless of the presence of residence of the obligee.

HISTORY: (P.L. 1979, ch. 260, § 2.)

§ 15-11-5. Interstate Rendition.

The Governor of this State may (1) demand of the Governor of another State the surrender of a person found in that State who is criminally in this State with failing to provide for the support of any person; or (2) surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-6. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-7. Choice of Law.

Duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-8. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (Enact.P.L. 1979. ch. 260, § 2.)

Cases

A father's obligation to reimburse the State for benefits paid to mother and child accrues even in the absence of a prior court order adjudging the father liable for support. State v. Erben, 463 A.2d 194 (R.I., 1983) (decided under former § 15-11-14).

§ 15-11-9. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (Enact.P.L.1979, ch. 260 § 2.)

Cases

Spouse's liability.

Where husband living in Rhode Island moves to Nevada and is divorced by default judgment and returns to Rhode Island, remarries and has child, his divorce is valid, but his duty to pay support to first wife is not diminished by the valid divorce. Rymanowski v. Rymanowski, 105 R.I. 89, 249 A.2d 407 (1969).

§ 15-11-10. Jurisdiction in Family Court.

Jurisdiction of any proceeding under this chapter is vested in the family court.

HISTORY: (Enact.P.L. 1979. ch. 260, § 2.)

Cases

Common-law marriage.

In an action by an alleged common-law wife to compel support by her alleged common-law husband for two children alleged to be those of the parties, the family court had jurisdiction to determine the validity of the alleged marriage and the paternity of the children. Sardonis v. Sardonis, 106 R.I. 469, 261 A.2d 22 (1970).

Limitation on right to support.

The former statute was inapplicable as a base upon which to confer jurisdiction upon the family court, since the right to support was limited to proceedings instituted under the Uniform Reciprocal Enforcement of Support Act, which was not the case here. Castellucci v. Castellucci, 116 R.I. 101, 116 R.I. 918, 352 A.2d 640 (1976).

Effect of prior support order.

A support order entered pursuant to a divorce proceeding does not bar under the doctrine of res judicata a subsequent action for support under the Reciprocal Enforcement of Support Act. Tetreault v. Tetreault,---R.I.---, 381 A.2d 1049 (1978).

§ 15-11-11. Contents and Filing of Petition or Complaint for Support; Venue.

(a) The petition or complaint shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom the support is sought, and all other pertinent information. The obligee may include in or attach to the petition or complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(B) The petition or complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition or complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued to support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

Cases

In general.

Under equity, claim for "support" is good even if stated as a claim for "alimony." Rymanowski v. Rymanowski, 105 R.I. 89, 249 A.2d 407 (1969).

§ 15-11-12. Official To Represent Obligee.

In any proceeding under this chapter the Department of Social and Rehabilitative Services shall represent the obligee.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-13. Petition or Complaint for a Minor.

A petition or complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-14. Duty of Initiating Court.

If the initiating court finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three (3) copies of the petition or complaint and its certificate and one (1) copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

§ 15-11-15. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the Department of Social and Rehabilitative Services. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

Cases

Attorneys' fees.

Absent express statutory authority, counsel fees are not awardable as part of the costs of litigation. "Costs," without more, will not be interpreted to include counsel fees. Waldeck v. Piner, ---R.I.--- , 488 A.2d 1218 (1985).

Where family court had jurisdiction of parties and subject matter, its power to award counsel fees could not be collaterally attacked on appeal from finding of contempt for failure to pay. Hartt v. Hartt, ---R.I.--- , 397 A.2d 518 (1979).

§ 15-11-16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may (1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or (2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-17. State Information Agency.

(a) The Department of Social and Rehabilitative Services is designated as the State Information Agency under this chapter, and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the General Assembly the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other State information agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions or complaints, certificates and copies of the act it receives from courts or infomation agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of three (3) copies of the petition or complaint and certificate and one (1) copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the Department of Social and Rehabilitative Services who may undertake the representation.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-18. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition or complaint, certificate and act from the initiating court the clerk of the court shall docket the case and notify the Department of Social and Rehabilitative Services and prosecuting attorney where applicable.

(b) The Department of Social and Rehabilitative Services and where applicable the prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

Cases

Attorneys' fees.

Where family court had jurisdiction of parties and subject matter, its power to award counsel fees could not be collaterally attacked on appeal from finding of contempt for failure to pay. Hartt v. Hartt,---R.I.---, 397 A.2d 518 (1979).

§ 15-11-19. Further Duties of Court and Officials in the Responding State.

(a) The Department of Social and Rehabilitative Services and where applicable the prosecuting attorney shall use all means at their disposal to locate the obligor or his property, and if because of inaccuracies in the petition or complaint or otherwise the court cannot obtain jurisdiction the Department of Social and Rehabilitative Services or where applicable the prosecuting attorney shall inform the court of what they have done and request the court to continue the case pending receipt of more accurate information or an amended petition or complaint from the initiating court.

(b) If the obligor or his property is not found in the State of Rhode Island, and the Department of Social and Rehabilitative Services or where applicable the prosecuting attorney discovers that the obligor or his property may be found in another State, they shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the Department of Social and Rehabilitative Services or where applicable the prosecuting attorney has not information as to the location of the obligor or his property, they shall so inform the initiating court.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-20. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or complaint or offers evidence constituting a defense the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-21. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-22. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-23. Rules of Evidence.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action in the family court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-24. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the family court of the responding State. The appropriate court of the State in which the obligor is present or has property has the same prowers and duties to enforce the order as has the court in which it was first issued. If enforcement is impossible or

cannot be completed in the State in which the order was issued, the Department of Social and Rehabilitative Services, or the prosecuting attorney where applicable, shall send a certified copy of the order to the appropriate official of any State in which it appears that proceedings to enforce the order will be effective. The said appropriate official to whom the order is forwarded shall proceed with the enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

Cases

Finding of adequate support.

Where a separation agreement, after reciting the desire of the parties . . . to settle "'all questions of allowance for the support of the wife, alimony, property rights . . . and also to made adequate provisions for the education, maintenance and support of the two . . . minor children of the parties . . .,'" provided for the husband to convey to the wife their family home, give her all furniture and household furnishings, pay her $22,000 a year, and pay all medical, educational, camp, and clothing expenses of the children, evidence that the husband had complied with all the terms of this agreement was sufficient to support the court's finding that he was adequately supporting the children and that support for the children was included in the $22,000 annual payment. Warren v. Warren, 106 R.I. 478, 260 A.2d 916 (1970).

Collateral references.

Foreign filiation or support order in bastardy proceedings, requiring periodic payments, as extraterritorially enforceable. 16 A.L.R.2d 1098.

§ 15-11-25. Responding Court To Transmit Copies of Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-26. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-27. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-28. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-29. Receipt and Disbursement of Payments by Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-30. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition or complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-31. Nullification of Support Order; Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-32. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-33. Intrastate Application.

This Act applies if both the obligee and the obligor are domiciliaries and/or residents of this State.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-34. Appeals.

If the Department of Social and Rehabilitative Services is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, it may:

(a) Perfect an appeal to the State supreme court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of the appeal may be paid on its order from funds appropriated for its office.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-35. Foreign Support Orders; Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies as provided in §§ 15-11-36 through 15-11-40.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-36. Right To Register Foreign Support Orders.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-37. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-38. Representation of Obligee by Department of Social and Rehabilitative Services.

If this State is acting either as a rendering or a registering State, the Department of Social and Rehabilitative Services shall represent the obligee in proceedings under §§ 15-11-36 through 15-11-40.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-39. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court

(1) three (3) certified copies of the order with all modifications thereof,

(2) one (1) copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the Department of Social and Rehabilitative Services of his action. The Department of Social and Rehabilitative Services shall proceed diligently to enforce the order.

HISTORY: (Enact.P.L. 1979, ch. 206, § 2.)

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§ 15-11-40. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-41. Uniformity of Interpretation.

This chapter shall be so constructed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

§ 15-11-42. Severability.

If any provisions of this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

HISTORY: (Enact.P.L. 1979, ch. 260, § 2.)

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SOUTH CAROLINA

S.C. CODE ANN. §§ 20-7-960 to 20-7-1170

Part I: General Provisions

§ 20-7-960. Short Title.

This subarticle may be cited as the "Uniform Reciprocal Enforcement of Support Act."

HISTORY: (1981 A. 71, § 1, eff. May 19, 1981.)

Cases

The Uniform Reciprocal Enforcement of Support Act (URESA) was not intended to be a separate means of creating a support obligation; it was designed to improve and extend enforcement of support obligations against obligors in other States, and accordingly, where a North Carolina court already determined that no enforceable support obligation existed, a former wife's remedy for breach of a separation agreement not incorporated into the divorce decree would be contractual. Baugh v. Baugh, 309 S.E.2d 756 (S.C., 1983).

Cited in McCullough v. McCullough, 130 S.E.2d 77 (S.C., 1963).

§ 20-7-965 Declaration of Purpose.

The purposes of this subarticle are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-970. Definitions.

As used in this subarticle unless the context requires otherwise:

(a) "COURT" means the family court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this subarticle.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial whether the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(h) "PROSECUTING ATTORNEY" means the circuit solicitor, county attorney, or attorney designated by the Department of Social Services pursuant to § 43.5.220.

(i) "REGISTER" means to file in the Registry of Foreign Support.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(l) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-974. Declaration of Foreign Jurisdiction as Initiating State.

When the Attorney General is satisfied that reciprocal provisions will be made by a foreign jurisdiction for the enforcement therein of support orders made within this State, the Attorney General may declare the foreign jurisdiction to be an initiating State for the purposes of this subarticle. Any declaration may be revoked by the Attorney General.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-975. Remedies Are Additional; Modification of Support Orders.

The remedies herein provided are in addition to and not in substitution for any other remedies. Nothing within this subarticle shall interfere with the authority of the family court to modify orders of support.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Cases

The Uniform Reciprocal Enforcement of Support Act (URESA) was not intended to be a separate means of creating a support obligation; it was designed to improve and extend enforcement of support obligations against obligors in other States, and accordingly, where a North Carolina court already determined that no enforceable support obligation existed, a former wife's remedy for breach of a separation agreement not incorporated into the divorce decree would be contractual. Baugh v. Baugh, 309 S.E.2d 756 (S.C., 1983).

It is within the authority of the family court under URESA to modify the amount of child support granted by an out-of-State divorce decree. Balestrine v. Jordan, 272 S.E.2d 438 (S.C., 1980).

§ 20-7-980. Duties of Support Applicable to Obligor; Obligor Present in State.

Duties of support arising under the law of this State, when applicable under § 20-7-995, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Part II: Criminal Enforcement

§ 20-7-985. Extradition of Persons Charged with Failure To Provide Support.

The Governor of this State may (1) demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or (2) surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person.

Provisions for extradition of criminals not inconsistent with this subarticle apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and had not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-990. Prerequisites To Making or Honoring Demand for Extradition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this subarticle or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require

any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Part III: Civil Enforcement

§ 20-7-995. Duties of Support Applicable to Obligor.

Duties of support applicable under this subarticle are those imposed or imposable under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1000. State Political Subdivision Furnishing Support May Initiate Proceeding Under Subarticle.

If a State, political subdivision, or an agency thereof furnishes support to an individual obligee it has the same right to initiate a proceeding under this subarticle as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1005. Enforceability of Support Duties; Jurisdiction; Defense of Immunity Based upon Marital or Parental Relationship.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this subarticle including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor. Jurisdiction of any proceeding under this subarticle is vested in the family court.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-1010. Verification and Contents of Petition; Filing With, and Acceptance By, Appropriate Court.

(a) The petition must be verified and must state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or

attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this State or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1015. Counsel for Obligee.

If this State is acting as an initiating State the prosecuting attorney, upon the request of the court, the Department of Social Services, or other local welfare official, shall represent the obligee in any proceeding under this subarticle.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Cases

In an action under the Uniform Reciprocal Enforcement of Support Act (URESA), the family court properly held a hearing in South Carolina without notice to the former wife's North Carolina attorney, since § 20-7-1080 provides that the county attorney or other statutory officer represent plaintiff in such action, and § 20-7-1120 provides for notice to the county attorney upon the filing of such action. Baugh v. Baugh, 309 S.E.2d 756 (S.C., 1983).

§ 20-7-1020. Petition by Custodian of Minor Obligee.

A petition on behalf of a minor obligee may be executed and filed by a person having actual custody of the minor without appointment as guardian ad litem.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1025. Sending Petition and Other Papers to Responding State Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the petition and its certificate and one copy of this subarticle to be sent to the responding court. Certification must be in accordance with the requirements of the initiating State. If the name and address of the responding court are unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official of the responding State, with a request that the agency or official forward them to the

proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1030. Payment of Fees and Costs by Obligor.

An initiating court may not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court may not require payment of a filing fee or other costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid by the obligor. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1035. Obtaining Body of Obligor if Court Thinks He May Flee Jurisdiction; Release of Obligor on Own Recognizance or upon Giving Bond.

If the court of this State believes that the obligor may flee it may (1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or (2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1981 A. 71, § 1.)

§ 20-7-1040. Department of Social Services Designated as State Information Agency; Duties.

(a) The State Department of Social Services is designated as the State Information Agency under this subarticle, and it shall

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this subarticle and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this subarticle and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies of the lists promptly to every court in this State having jurisdiction under this subarticle; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates, and copies of the act it receives from courts or information agencies of other States.

and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to tax offices, both State and Federal, where the offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1045. Duties of Responding Court on Receipt of Petition and Other Papers from Initiating Court; Duties of Prosecuting Attorney.

(a) After the responding court receives copies of the petition, certificate, and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice of the hearing to the obligor in accordance with law.

HISTORY: (1984 A. 356, § 1.)

Cases

In an action under the Uniform Reciprocal Enforcement of Support Act (URESA), the family court properly held a hearing in South Carolina without notice to the former wife's North Carolina attorney, since § 20-7-1080 provides that the county attorney or other statutory officer represent plaintiff in such action, and § 20-7-1120 provides for notice to the county attorney upon the filing of such action. Baugh v. Baugh, 309 S.E.2d 756 (S.C., 1983).

§ 20-7-1050. Attempt To Locate Obligor or His Property; Inability of Court To Obtain Jurisdiction; Forwarding of Documents Where Obligor Is Discovered in Another County; Notification of Initiating Court as to Absence of Information Concerning Obligor.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this subarticle apply to the recipient of

the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1055. Continuance Where Obligee Is Not Present at Hearing and Obligor Denies Duty of Support; Additional Evidence; Discovery.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by discovery or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-1060. Obligor's Refusal To Testify on Ground of Self-Incrimination; Grant of Immunity.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1065. Communications Between Spouses Are Not Privileged; Competency of Spouses.

Laws attaching a privilege against the disclosure of communications between the husband and wife are inapplicable to proceedings under this subarticle. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1070. Rules of Evidence; Defenses.

In any hearing for the civil enforcement of this subarticle the court is governed by the rules of evidence applicable in a civil court action in the family court. If the action is based on a support order issued by another court a certified copy of the order must be received as evidence of the duty of support, subject only to any defenses available to a defendant in an action or a proceeding to enforce a foreign money judgment. The

determination or enforcement of a duty of support owed to one obligee is unaffected by an interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Cases

In a child support action brought by a former wife against her former husband, a dissolution of marriage issued by California between the parties did not bar on res judicata grounds the instant child support action brought on behalf of the parties' minor child since the child was not a party to the action in California. Jordan v. Jordan (1985, S.C.App.) 326 S.E.2d 416.

§ 20-7-1075. Order for Support or Reimbursement for Support; Enforcement.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement for support and subject the property of the obligor to the order. Support orders made pursuant to this subarticle shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1080. Transmittal of Support Order.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1085. Responding Court May Impose Conditions Assuring Compliance with Orders.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1090. Determination of Paternity Issue.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may continue the hearing until the paternity issue is adjudicated by the court or by any other court of competent jurisdiction.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1095. Responding Court's Duty To Transmit Obligor's Payments to Initiating Court; Duty To Furnish Statement to Initiating Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1100. Duty of Initiating Court To Receive and Disburse Payments Sent by Responding Court.

An initiating court shall receive and disburse all payments made by the obligor or sent by the responding court. The duty may be carried out through the clerk of the court.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1105. Pendency of Other Action or Proceeding as Affecting Stay of Proceeding or Hearing.

A responding court may not stay the proceeding or refuse a hearing under this subarticle because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this State or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court shall take in the other action or proceeding. Thereafter the

court may not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-1110. Preference of Support Order Under Subarticle; Credit for Amounts Paid Under Foreign Support Order.

A support order made by a court of this State pursuant to this subarticle does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State must be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1115. No Jurisdiction over Parties Conferred in Other Proceedings.

Participation in any proceeding under this subarticle does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1120. Applicability of Subarticle Where Obligee and Obligor Are in Different Counties.

This subarticle applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

Part IV: Registration of Foreign Support Orders

§ 20-7-1130. Additional Remedies Where Duty of Support Is Based on Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1135. Registration of Foreign Support Order Generally.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1140. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1145. Representation of Obligee in Proceeding.

If the State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, the Department of Social Services, or other local welfare official shall represent the obligee in proceeding under this Part IV.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-1150. Procedure for Registration of Foreign Support Order; Duties of Clerk of Court and Prosecuting Attorney.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of court (1) three certified copies of the order with all modifications of the order, (2) one copy of the reciprocal enforcement of support act of the State in which the order was made, and (3) a statement verified and signed by the obligee, showing the post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this subarticle.

(b) Promptly upon registration the clerk of the court shall docket the case and notify the prosecuting attorney of his actions. The prosecuting attorney shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1155. Effect of Registration; Petition To Vacate Registration; Confirmation; Defenses.

(a) Upon registration the registered foreign support order must be treated in the same manner as a support order issued by a court of this State. It has the same effect and

is subject to the same procedures, defenses, and proceedings for modifying, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registration support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. However, all defenses are available to the obligor to attack the amount registered as owing if the law of the initiating State allows modification of arrearages.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1160. Construction.

This subarticle must be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

§ 20-7-1165. Severability.

If any provision of this subarticle or the application of the subarticle to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the subarticle which can be given effect without the invalid provision or application, and to this end the provisions of this subarticle are severable.

HISTORY: (1984 A. 356, § 1.)

§ 20-7-1170. Lawsuits Pending on Effective Date of this Subarticle.

Any lawsuits pending on the effective date of this subarticle may continue under the provisions of the Uniform Reciprocal Enforcement of Support Act as enacted by Act 71 of 1981.

HISTORY: (1981 A. 71, § 1; 1984 A. 356, § 1.)

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§ 25-9A-1. Definition of Terms.

Terms used in this chapter, unless the context otherwise requires, mean:

(1) "COURT," a circuit court of this State or, when the context requires, the court of any other state as defined in a substantially similar reciprocal law;

(2) "DUTY OF SUPPORT," a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid;

(3) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter;

(4) "INITIATING STATE," a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced;

(5) "INITIATING COURT," the court in which a proceeding is commenced;

(6) "LAW" includes both common and statutory law;

(7) "OBLIGEE," a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance;

(8) "OBLIGOR," any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced;

(9) "PROSECUTING ATTORNEY or STATE'S ATTORNEY," the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person;

(10) "REGISTER," to file in the Registry of Foreign Support Orders;

(11) "REGISTERING COURT," any court of this State in which a support order of a rendering State is registered;

(12) "RENDERING STATE," a State in which the court has issued a support order for which registration is sought or granted in the court of another State;

(13) "RESPONDING STATE," a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced;

(14) "RESPONDING COURT," the court in which the responsive proceeding is commenced;

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(15) "STATE," includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect;

(16) "SUPPORT ORDER," any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (S.L. 1951, ch. 43, § 2; 1953, ch. 41, § 2; S.D.C.Supp. 1960, § 14.0803; S.D.C.L., § 25-9-29; S.L. 1980, ch. 191, § 1.)

§ 25-9A-2. Remedies Additional to Existing Remedies.

The remedies provided in this chapter are in addition to and not in substitution for any other remedies.

HISTORY: (S.L. 1951, ch. 43, § 3; 1953, ch. 41, § 3; S.D.C.Supp. 1960, § 14.0804; S.D.C.L., § 25-9-29; S.L. 1980, ch. 191, § 2.)

§ 25-9A-3. Extent of Duties of Support.

Duties of support arising under the laws of this State, when applicable under § 25-9A-6, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (S.L. 1951, ch. 43, § 4; 1953 ch. 41, § 4; S.D.C.Supp. 1960, § 14.0805; S.D.C.L., § 25-9-5; S.L. 1980, ch. 191 § 3.)

§ 25-9A-4. Criminal Enforcement; Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person.

Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (S.L. 1951, ch. 43, § 5; 1953 ch. 41, § 5; S.D.C.Supp. 1960, § 14.0806; S.D.C.L., §§ 25-9-24, 25-9-25; S.L. 1980, ch. 191 § 4.)

§ 25-9A-5. Conditions of Interstate Rendition.

Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (S.L. 1980, ch. 191 § 5.)

§ 25-9A-6. Civil Enforcement; Choice of Law.

Duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (S.L. 1951, ch. 43, § 7; 1953, ch. 41, § 7; S.D.C.Supp. 1960, § 14.0808; S.D.C.L., § 25-9-4; S.L. 1980, ch. 191, § 6.)

§ 25-9A-7. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this chapter as the individual obligee for the purposes of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (S.L. 1951, ch. 43, § 8; 1953, ch. 41, § 8; S.D.C.Supp. 1960, § 14.0809; S.D.C.L., § 25-9-7; S.L. 1980, ch. 191, § 7.)

§ 25-9A-8. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (S.L. 1951, ch. 43, § 9; 1953, ch. 41, § 9; S.D.C.Supp. 1960, § 14.0810; S.D.C.L., § 25-9-6; S.L. 1980, ch. 191, § 8.)

§ 25-9A-9. Jurisdiction.

Jurisdiction of any proceeding under this chapter is vested in the circuit court of this State.

HISTORY: (S.L. 1951, ch. 43, § 9; 1953, ch. 41, § 9; S.D.C.Supp. 1960, § 14.0810; S.D.C.L., § 25-9-6; S.L. 1980, ch. 191, § 9.)

§ 25-9A-10. Contents and Filing of Petition for Support; Venue.

The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (S.L. 1951, ch. 43, § 10; 1953, ch. 41, § 10; S.D.C.Supp. 1960, § 14.0811; S.D.C.L., § 25-9-8; S.L. 1980, ch. 191, § 10.)

§ 25-9A-11. Officials To Represent Obligee.

If this State is acting as an initiating State the State's attorney upon the request of the court or State Department of Social Services shall represent the obligee. If the State's attorney neglects or refuses to represent the obligee, the attorney general shall undertake the representation.

HISTORY: (S.L. 1953, ch. 41, § 11; S.D.C.Supp. 1960, § 14.0812; S.D.C.L., § 25-9-10; S.L. 1980, ch. 191, § 11.)

§ 25-9A-12. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (S.L. 1953, ch. 41, § 12; S.D.C.Supp. 1960, § 14.0813; S.D.C.L., § 25-9-9; S.L. 1980, ch. 191, § 12.)

§ 25-9A-13. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding

State may obtain jurisdiction of the obligor or his property it shall so certify and cause three copies of the petition and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (S.L. 1951, ch. 43, § 11; 1953, ch. 41, § 13; S.D.C.Supp. 1960, § 14.0814; S.D.C.L., §§ 25-9-11, 25-9-12; S.L. 1980, ch. 191, § 13.)

§ 25-9A-14. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs and from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (S.L. 1980, ch. 191, § 14.)

§ 25-9A-15. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (S.L. 1953, ch. 41, § 15; S.D.C.Supp. 1960, § 14.0816; S.D.C.L., § 25-9-15; S.L. 180, ch. 191, § 15.)

§ 25-9A-16. State Information Agency; Attorney General's Office; Duties.

The attorney general's office is designated as the State Information Agency under this chapter. It shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the Legislature the agency shall distribute copies of any amendments to the chapter and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

HISTORY: (S.L. 1953, ch. 41, § 16; S.D.C.Supp. 1960, § 14.0817; S.D.C.L., § 25-9-3; S.L. 1980, ch. 191, § 16.)

§ 25-9A-17. State Information Agency; Location of Obligor or Property.

If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (S.L. 1980, ch. 191, § 17.)

§ 25-9A-18. State Information Agency; Action where Case Not Prosecuted Diligently.

After the deposit of three copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the State's attorney is not prosecuting the case diligently it shall inform the Attorney General, who shall undertake the representation.

HISTORY: (S.L. 1980, ch. 191, § 18.)

§ 25-9A-19. Duties of Court and Officials of this State as Responding State.

After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the State's attorney of his action.

The State's attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

If the State's attorney neglects or refuses to represent the obligee the Attorney General may order him to comply with the request of the court or undertake the representation.

HISTORY: (S.L. 1951, ch. 43, § 12; 1953, ch. 41, § 17; S.D.C.Supp. 1960, § 14.0818; S.D.C.L., § 25-9-13; S.L. 1980, ch. 191, § 19.)

Jurisdiction can be obtained under subd. (4) of this section only by issuance and service of summons, and not by filing of an order to show cause, whether the child support obligation is claimed pursuant to a divorce decree or not. Opinion No. 77-38.

§ 25-9A-20. Further Duties of Court and Officials in Responding State.

The State's attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the State's attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

If the obligor or his property is not found in the county, and the State's attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

If the State's attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

HISTORY: (S.L. 1953, ch. 41, § 18; S.D.C.Supp. 1960, § 14.0819; S.D.C.L., § 25-9-14; S.L. 1980, ch. 191, § 20.)

§ 25-9A-21. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (S.L. 1980, ch. 191, § 21.)

§ 25-9A-22. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (S.L. 1980, ch. 191, § 22.)

§ 25-9A-23. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.

HISTORY: (S.L. 1951, ch. 43, § 18; 1953, ch. 41 § 24; S.D.C.Supp. 1960, § 14.0825; S.D.C.L., § 25-9-17; S.L. 1980, ch. 191, § 23.)

§ 25-9A-24. Evidentiary Rules.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action in the circuit court. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity as provided in § 25-9A-28, or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (S.L. 1980, ch. 191, § 24.)

§ 25-9A-25. Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding State. The court and State's attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the State's attorney shall send a certified copy of the order to the State's attorney of any county in which it appears that proceedings to enforce the order would be effective. The State's attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (S.L. 1951, ch. 43, § 13; 1953, ch. 41, § 19; S.D.C.Supp. 1960, § 14.0820; S.D.C.L., § 25-9-18; S.L. 1980, ch. 191, § 25.)

§ 25-9A-26. Responding Court to Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (S.L. 1951, ch. 43, § 14; 1953, ch. 41, § 20; S.D.C.Supp. 1960, § 14.0821; S.D.C.L., § 25-9-19; S.L. 1980, ch. 191, § 26.)

§ 25-9A-27. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (S.L. 1951, ch. 43, § 15; 1953, ch. 41, § 21; S.D.C.Supp. 1960, § 14.0822; S.D.C.L., § 25-9-21; S.L. 1980, ch. 191, § 27.)

§ 25-9A-28. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (S.L. 1980, ch. 191, § 28.)

Cases

Paternity established in original divorce decree.

Appellant was barred by the doctrine of res judicata from raising the issue of paternity in a support action where the appellant had the opportunity to contest paternity, but did not do so, in the prior divorce action, which judgment required him to make child support payments, and there was no allegation by appellant that the judgment in the divorce action was obtained by fraud. Luedtke v. Koopsma (1981) 303 N.W.2d 112.

§ 25-9A-29. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (S.L. 1951, ch. 43, § 16; 1953, ch. 41, § 22; S.D.C.Supp. 1960, § 14.0823; S.D.C.L., § 25-9-22; S.L. 1980, ch. 191, § 29.)

§ 25-9A-30. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (S.L. 1951, ch. 43, § 17; 1953, ch. 41, § 23; S.D.C.Supp. 1960, § 14.0824; S.D.C.L., § 25-9-23; S.L. 1980, ch. 191, § 30.)

§ 25-9A-31. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (S.L. 1980, ch. 191, § 31.)

§ 25-9A-32. Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (S.L. 1980, ch. 191, § 32.)

§ 25-9A-33. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (S.L. 1953, ch. 41, § 26; S.D.C.Supp. 1960, § 14.0827; S.D.C.L., § 25-9-16; S.L. 1980, ch. 191, § 33.)

§ 25-9A-34. Intrastate Application.

This chapter applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the

petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the State's attorney of their receipt. The State's attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (S.L. 1980, ch. 191, § 34.)

§ 25-9A-35. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (S.L. 1980, ch. 191, § 35.)

§ 25-9A-36. Foreign Support Order; Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (S.L. 1980, ch. 191, § 36.)

§ 25-9A-37. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (S.L. 1980, ch. 191, § 37.)

§ 25-9A-38. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (S.L. 1980, ch. 191, § 38.)

§ 25-9A-39. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the State's attorney upon the request of the court or the State Department of Social Services shall represent the obligee in proceedings under this part. If the State's attorney neglects or refuses to represent the obligee, the Attorney General shall undertake the representation.

HISTORY: (S.L. 1980, ch. 191, § 39.)

§ 25-9A-40. Registration Procedure.

An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court the following:

(1) Three certified copies of the order with all modifications thereof;

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made; and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

HISTORY: (S.L. 1980, ch. 191, § 40.)

§ 25-9A-41. Notice of Registration.

Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the State's attorney of his action. The State's attorney shall proceed diligently to enforce the order.

HISTORY: (S.L. 1980, ch. 191, § 41.)

§ 25-9A-42. Effect of Registration; Enforcement Procedure.

Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (S.L. 1980, ch. 191, § 42.)

§ 25-9A-43. Uniformity of Interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (S.L. 1951, ch. 43, § 20; 1953, ch. 41, § 28; S.D.C.Supp. 1960, § 14.0829; S.D.C.L., § 25-9-28; S.L. 1980, ch. 191, § 43.)

§ 25-9A-44. Short Title.

This chapter may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (S.L. 1951, ch. 43, § 21; 1953, ch. 41, § 29; S.D.C.Supp. 1960, § 14.0801; S.D.C.L., § 25-9-31; S.L. 1980, ch. 191, § 44.)

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§ 36-5-201. Purposes of Part.

The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (A. 1953, ch. 188, § 1 (Williams, § 9720.29); T.C.A. (orig. ed.), § 36.901.)

Cases

In general.

Proceedings to determine paternity under this part is not a bastardy proceeding but is a proceeding under the Reciprocal Support Act. State ex rel. Ivory v. Lewis, 660 S.W.2d 797 (Tenn.Ct.App., 1983).

The reciprocal enforcement statute simply does not empower a Tennessee court to render void the valid orders of a foreign jurisdiction. United States v. Stephens, 472 F.Supp. 14 (E.D.Tenn., 1979); aff'd, 659 F.2d 1083 (6th Cir., 1981).

Pursuant to this part, a Tennessee court may modify a foreign support judgment for the limited purposes of its own enforcement, but such action by the court does not affect the underlying validity of the foreign decree. Id.

Constitutionality.

Reciprocal Enforcement of Alabama Support Act under provisions of this part wherein Alabama court is initiating State entered a decree in suit by wife, a resident of that State, that defendant a resident of Tennessee, was liable for support of minor child of plaintiff and defendant, and mailed decree to Tennessee court which summoned defendant and entered a similar decree after hearing did not violate due process clause under the United States Constitution, Amendment 14. Sinclair v. Sinclair, 268 S.W.2d 573 (Tenn., 1954).

Construction.

The Reciprocal Enforcement of Support Act is a uniform law which has been adopted by the legislatures of this State and of Michigan, and being remedial in nature, should be liberally construed. Martin v. Martin, 373 S.W.2d 609 (Tenn. 1963).

Purpose.

The Uniform Reciprocal Enforcement of Support Act is not merely a procedural act designed solely for the purpose of enforcing orders of foreign courts relating to support of dependent children, but also provides for the modification of support orders rendered in a court of a foreign State. Koehler v. Koehler, 559 S.W.2d 944 (Tenn.App., 1977).

The Reciprocal Enforcement of Support Act is a statutory scheme creating a procedure by which one obligated by a duty of support can in a convenient and simple

manner be called upon to discharge this duty which arises out of the law of domestic relations. Barrow v. Barrow, 419 S.W.2d 164 (Tenn., 1967).

This Reciprocal Enforcement of Support Act is a civil proceeding and is designed to provide a simplified, fair and convenient way to cause those who are obligated to support their minor children to do so without having to be extradited to another State. Martin v. Martin, 373 S.W.2d 609 (Tenn., 1963).

Jurisdiction of courts.

The probate court of Davidson County when acting in the field of domestic relations is a court of general jurisdiction and the Reciprocal Enforcement of Support Act being a part of the law of domestic relations is within the jurisdiction of that court. Barrow v. Barrow, 419 S.W.2d 164 (Tenn., 1967).

Contempt.

Under Tennessee public policy the accumulated amount due under a foreign alimony decree will be enforced to the same extent as decrees of Tennessee courts, even to the extent of holding the respondent in contempt for failure to pay the entire sum. Schmidt v. Schmidt, 493 S.W.2d 720 (Tenn., 1973).

§ 36-5-202. Definitions.

As used in this part unless the context requires otherwise:

(1) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

(2) (A) "COURT" means the circuit court of this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(B) In addition, "COURT" also means the juvenile court in counties of this State having a population of six hundred thousand (600,000) or more according to the 1970 Federal census of population or any subsequent Federal census.

(C) In addition, in counties having a population of not less than sixty-five thousand (65,000) nor more than sixty-seven thousand (67,000) according to the 1970 Federal census, the juvenile courts of this State shall have jurisdiction to hear, as the initiating State, and certify petitions for enforcement of the duty of support, pursuant to § 36-5-213.

(D) In addition, "COURT" also means the juvenile court in counties of this State having a population of not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 Federal census of population or any subsequent Federal census.

(3) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

(4) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any territory covered by the provisions of this part.

(5) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(6) "LAW" includes both common and statute law.

(7) "OBLIGEE" means any person to whom a duty of support is owed a State or political subdivision thereof.

(8) "OBLIGOR" means any person owing a duty of support.

(9) "REGISTER" means to record in the Registry of Foreign Support Orders.

(10) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(11) "RENDERING STATE" means any State in which a support order is originally entered.

(12) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(13) "STATE" includes any State, territory, or possession of the United States and the District of Columbia or any foreign jurisdiction in which this or a substantially similar reciprocal law has been enacted.

(14) "SUPPORT ORDER" means any judgment, decree or order of support whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered.

HISTORY: (A. 1953, ch. 188, § 2 (Williams, § 9720.30); 1959, ch. 214, §§ 1, 2; 1977, ch. 146, § 1; 1978 (Adj.S.), ch. 666, § 1; 1979, ch. 110, § 1; 1981, ch. 329, §§ 1, 3; 1983, ch. 92, § 1; T.C.A. (orig. ed.), § 36-902.)

Cases

Constitutionality.

In view of its purposes to provide benefits to minor children living in a State foreign to the residence of their father who refuses to support them, provision of this Reciprocal Enforcement of Support Act permitting filing of a petition by a nonresident upon a pauper's oath, certified in accordance with the law of the certifying State, although our general laws do not authorize such filing, does not violate our constitutional prohibitions against suspension of our general laws. Martin v. Martin, 373 S.W.2d 609 (Tenn., 1963).

Reciprocating State.

Kentucky is a reciprocating State within the definition of "State" in this section so that it is within the power of the Governor of Tennessee to order extradition of a person under this statute upon demand of the Governor of Kentucky. State ex rel. Duval v. Frazier, 423 S.W.2d 487 (Tenn., 1968).

Duty of support.

Under this statute the duty of support need not be the result of court action but may be any duty imposable by law such as the duty of a putative father to support an illegitimate child. Brown v. Thomas, 426 S.W.2d 496 (Tenn., 1968).

Court's discretion.

Where a New York court found that an increase in payments for a minor child's support was necessary, and certified the cause to the Tennessee court for judgment, the trial judge rendering such judgment did not exceed his jurisdiction by ordering the increase in support payments. Koehler v. Koehler, 559 S.W.2d 944 (Tenn.App., 1977).

§ 36-5-203. Remedies Additional.

The remedies provided in this part are in addition to and not in substitution for any other remedies.

HISTORY: (A. 1953, ch. 188, § 3 (Williams, § 9720.31); T.C.A. (orig. ed.), § 36.903)

§ 36-5-204. Obligor Bound Regardless of Residence of Obligee.

Duties of support arising under the law of this State, when applicable under 36-5-207, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (A. 1953, ch. 188, § 4 (Williams, § 9720.32); T.C.A. (orig. ed.), § 36.904.)

§ 36-5-205. Extradition for Crime of Nonsupport.

(a) The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of a person in such other State.

(b) The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom.

(c) Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (A. 1953, ch. 188, § 5 (Williams, § 9720.33) T.C.A. (orig. ed.), § 36.905.)

Cases

Father could be extradited for crime of nonsupport of children regardless of whether it was proved that he was in the initiating State at the time of the crime of nonsupport of his infant children or of the subsequent indictment. State ex rel. Duval v. Frazier, 423 S.W.2d 487 (Tenn., 1968).

§ 36-5-206. Conditions for Extradition.

(a) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require the District Attorney General of the judicial circuit in which the obligor resides to satisfy him that at least sixty (60) days prior thereto the obligor brought an action for the support under this part, or that the bringing of an action would be of no avail.

(b) When under this or a substantially similar law, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon the District Attorney General of the judicial circuit in which the obligor resides to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this part or would be effective.

(c) If an action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (A. 1953, ch. 188, § 6 (Williams, § 9720.34); 1959, ch. 214, § 3; T.C.A. (orig. ed.), § 36.906.)

Cases

Conditions for extradition provided by this section are directed exclusively to the discretion of the Governor and not to any court and the exercise of the discretion of the Governor in this regard is not subject to court review. State ex rel. Duval v. Frazier, 423 S.W.2d 487 (Tenn., 1968).

§ 36-5-207. What Duties Are Enforceable.

Duties of support applicable under this part are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (A. 1953, ch. 188, § 7 (Williams, § 9720.35); T.C.A. (orig. ed.), § 36.907.)

Cases

Where a New York court found that an increase in payments for a minor child's support was necessary, and certified the cause to the Tennessee court for judgment, the trial judge rendering such judgment did not exceed his jurisdiction by ordering the increase in support payments. Koehler v. Koehler, 559 S.W.2d 944 (Tenn.App., 1977).

§ 36-5-208. Remedies of State or Political Subdivision Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions of this part as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (A. 1953, ch. 188, § 8 (Williams, § 9720.36); T.C.A. (orig. ed.), § 36.908.)

§ 36-5-209. Jurisdiction.

(a) All duties of support, including arrearages, are enforceable by petition irrespective of relationship between the obligor and obligee.

(b) (1) Jurisdiction of all proceedings hereunder shall be vested concurrently in the circuit and criminal courts of the State of Tennessee.

(2) In addition, jurisdiction of all proceedings hereunder shall also be vested in juvenile courts in counties having a population of six hundred thousand (600,000) or more according to the 1970 Federal census of population or any subsequent Federal census and in counties having a population of not less than seventy-four thousand (74,000) nor more than seventy-six thousand (76,000) and in counties having a population of not less than eight-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 Federal census of population or any subsequent Federal census.

(3) In addition, in all proceedings hereunder in which the ultimate issue is the paternity of a child, jurisdiction shall also be vested in juvenile courts of this State.

HISTORY: (A. 1953, ch. 188, § 9 (Williams, § 9720.37); 1955, ch. 106, § 1; 1959, ch. 214, § 4; 1981, ch. 329, §§ 2,3; 1982 (Adj. S.), ch. 812, § 1; A. 1983, ch. 92, § 2; T.C.A. (orig. ed.), § 36.909; A. 1985, ch. 477, § 15.)

Cases

Arrearages.

Arrearages are not cancelled when the children reach the age of majority. Richmond v. Richmond, 690 S.W.2d 534 (Tenn.Ct.App., 1985).

§ 36-5-210. Petition; Form and Contents.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom

support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (A. 1953, ch. 188, § 10 (Williams, § 9720.38); T.C.A. (orig. ed.), § 36.910.)

§ 36-5-211. District Attorney General To Represent Petitioner.

When this State is acting as the responding State, the District Attorney General shall represent the petitioner in any cause filed under the provisions of this part in any county within his judicial circuit, as set out in § 36-5-219.

HISTORY: (A. 1953, ch. 188, § 11 (Williams, § 9720.39); T.C.A. (orig. ed.), § 36.911.)

§ 36-5-212. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (A. 1953, ch. 188, § 12 (Williams, § 9720.40); T.C.A. (orig. ed.), § 36.912.)

§ 36-5-213. Duty of Court of Initiating State.

(a) If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the responding State may obtain jurisdiction of the respondent or his property, the court shall so certify and shall cause three (3) copies of:

(1) The petition;

(2) Its certificate; and

(3) This part to be transmitted to the court in the responding State.

(b) If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (A. 1953, ch. 188, § 13 (Williams, § 9720.41); T.C.A. (orig. ed.), § 36.913.)

Cases

Judgment against nonresident.

The trial court as an initiating court was not authorized to enter personal judgment against nonresident father on a petition by State to recover for sums expended by the State for support of destitute children. State v. Perry, 280 S.W.2d 919 (Tenn., 1955).

Judgment against resident.

In view of its purposes to provide benefits to minor children living in a State foreign to the residence of their father who refuses to support them, provisions of this Reciprocal Enforcement of Support Act permitting filing of a petition by a nonresident upon a pauper's oath, certified in accordance with the law of the certifying State, do not violate the constitutional prohibition against suspension of our general laws, although such filing is not authorized by our general laws. Martin v. Martin, 373 S.W.2d 609 (Tenn., 1963).

Cited: State ex rel. Ivory v. Lewis, 660 S.W.2d 797 (Tenn.Ct.App., 1983).

§ 36-5-214. Costs.

When the petition is filed by the State or any political subdivision thereof or is accompanied by a pauper's oath, there shall be no filing fee or other costs, either in the initiating State or the responding State, taxable to the obligee but a court of this State acting either as an initiating State or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property, be paid by the obligor.

HISTORY: (Acts 1953, ch. 188, § 14 (Williams, § 9720.42); 1959, ch. 214, § 5; T.C.A. (orig. ed.), § 36.914).

Cases

In view of its purposes to provide benefits to minor children living in a State foreign to the residence of their father who refuses to support them, provisions of this Reciprocal Enforcement of Support Act permitting filing of a petition by a nonresident upon a pauper's oath, certified in accordance with the law of the certifying State, do not violate the constitutional prohibition against suspension of our general laws, although such filing is not authorized by our general laws. Martin v. Martin, 373 S.W.2d 609 (Tenn., 1963).

§ 36-5-215. Arrest of Respondent.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction it may:

(1) As an initiating State request in its certificate that the court of the responding State obtain the body of the respondent by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the respondent by appropriate process.

HISTORY: (A. 1953, ch. 188, § 15 (Williams, § 9720.43); T.C.A. (orig. ed.), § 36.915.)

§ 36-5-216. State Information Agency.

The State Department of Human Services is hereby designated as the State Information Agency under this part, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this part and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar act.

(2) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this part.

HISTORY: (A. 1953, ch. 188, § 16 (Williams, § 9720.44); impl.am.A. 1975, ch. 219, § 1; T.C.A. (orig. ed.), § 36.916.)

§ 36-5-217. Duties of Court of Responding State.

When the court of this State, acting as the responding State, receives from the court of an initiating State the aforesaid copies, the clerk of the court shall:

(1) Docket the case;

(2) Set a time and place for the hearing;

(3) Notify the respondent by having the sheriff serve process upon the respondent and leaving a copy of the petition with the respondent;

(4) Notify the District Attorney General of the filing of the petition by leaving him a copy thereof; and

(5) Take such other action as is necessary in accordance with the laws of this State to obtain jurisdiction over the respondent.

HISTORY: (A. 1953, ch. 188, § 17 (Williams, § 9720.45); 1959, ch. 214, § 6; T.C.A. (orig. ed.), § 36.917.)

Cases

Cited: Smith v. Smith, 497 S.W.2d 575 (Tenn.Ct.App., 1972).

§ 36-5-218. Failure To Obtain Jurisdiction.

(a) The District Attorney General shall, on his own initiative, use all means at his disposal to trace the respondent or his property, and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the District Attorney General shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(b) If the respondent or his property is not found in the county and the District Attorney General discovers by any means that the respondent or his property may be

found in another county of this State or in another State, he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon both the court of the other county and any court of this State receiving the documents and the District Attorney General have the same powers and duties under this part as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the District Attorney General has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

HISTORY: (A. 1953, ch. 188, § 18 (Williams, § 9720.46); 1959, ch. 214, § 7; T.C.A. (orig. ed.), § 36.918.)

§ 36-5-219. Consideration of Petition of Initiating State; Presumption.

(a) The courts of this State are to keep in mind the intent and purposes of this part as set out in § 36-5-201, therefore, the court shall consider and recognize the petitions of the initiating State as certified by the courts as set out in § 36-5-213.

(b) The introduction of the petition from the initiating State when duly certified, shall create a presumption of the truthfulness of the facts alleged therein and prima facie evidence of the liability of the respondent and shall shift the burden of proof to such respondent.

HISTORY: (A. 1953, ch. 188, § 19 (Williams, § 9720.47); T.C.A. (orig. ed.), § 36.919.)

Cases

The burden imposed is not one to prove a fact to a moral certainty and beyond a reasonable doubt, it merely shifts the ordinary burden of proof from the plaintiff to the defendant. State ex rel. Ivory v. Lewis, 660 S.W.2d 797 (Tenn.Ct.App., 1983).

§ 36-5-220. Order of Support; Enforcement.

(a) If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order.

(b) The court and District Attorney General of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the District Attorney General shall transmit a certified copy of the order to the District Attorney General of any county where it appears that procedures to enforce payment of the amount due would be effective. The District Attorney General to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

(c) The provisions of part 4 of this chapter and § 50-2-105 shall apply in these proceedings.

HISTORY: (A. 1953, ch. 188, § 20 (Williams, § 9720.48); 1959, ch. 214, § 8; T.C.A. (orig. ed.), § 36.920; Acts 1985, ch 477 § 15.)

§ 36-5-221. Transmission of Copies of Orders to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (A. 1953, ch. 188, § 21 (Williams, § 9720.49); T.C.A. (orig. ed.), § 36.921.)

§ 36-5-222. Enforcement Powers of Responding Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent;

(2) To require the respondent to make payments at specified intervals to the clerk of the court of this State, acting as the responding State; and

(3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (A. 1953, ch. 188, § 22 (Williams, § 9720.50); T.C.A. (orig. ed.), § 36.922.)

Cases

Cited: Koehler v. Koehler, 559 S.W.2d 944 (Tenn. App., 1977).

§ 36-5-223. Payments Transmitted to Initiating State; Certified Statement of Payments.

The clerk of the court in which the proceeding is brought as the responding State shall be charged with the duty of:

(1) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (A. 1953, ch. 188, § 23 (Williams, § 9720.51); T.C.A. (orig. ed., § 36.923.)

§ 36-5-224. Receipt and Disbursement of Payments by Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

HISTORY: (A. 1953, ch. 188, § 24 (Williams, § 9720.52); T.C.A. (orig. ed.), § 36.924.)

§ 36-5-225. Marital Privilege Inapplicable.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (A. 1953, ch. 188, § 25 (Williams, § 9720.53); T.C.A. (orig. ed.), § 36.925.)

§ 36-5-226. Application of Payments.

Any order of support issued by a court of this State when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (A. 1953, ch. 188, § 26 (Williams, § 9720.54); T.C.A. (orig. ed.), § 36.926.)

Cases

In general.

Uniform Reciprocal Enforcement of Support Act orders do not supersede prior support orders. Nissen v. Miller, 642 S.W.2d 428 (Tenn.Ct.App., 1982).

Rights under foreign decree.

Divorced mother was not precluded from bringing suit in Tennessee court to recover deficiency allegedly due under Georgia divorce decree for alimony and child support even though she had received benefit of Tennessee reciprocal support judgment for less than the amount of child support provided for in Georgia decree. Hester v. Hester, 443 S.W.2d 28 (Tenn., 1968).

§ 36-5-227. Jurisdictional Effect of Participation in Proceedings.

Participation in any proceedings under this part shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (A. 1953, ch. 188, § 27 (Williams, § 9720.55); T.C.A. (orig. ed.), § 36.927.)

§ 36-5-228. Proceedings Not To Be Stayed.

No proceeding under this part shall be stayed because of the existence of a pending action for divorce, separation, annulment, habeas corpus or custody proceeding.

HISTORY: (A. 1959, ch. 214, § 9; T.C.A., § 36.928.)

Cases

Cited: Koehler v. Koehler, 559 S.W.2d 944 (Tenn.App., 1977).

§ 36-5-229. Registration of Foreign Support Orders; Enforcement.

If the duty of support is based on a foreign support order, the obligee has the following additional remedies:

(1) The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

(2) The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

(3) The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

(4) The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

(5) The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this State.

(6) The provisions of part 4 of this chapter and § 50.2.105 shall apply to these proceedings.

HISTORY: (A. 1959, ch. 214, § 9; T.C.A., § 36.929; A. 1985, ch. 477, § 15.)

Cases

Cited: Smith v. Smith, 497 S.W.2d 575 (Tenn.Ct.App., 1972), and State ex rel. Ivory v. Lewis, 660 S.W.2d 797 (Tenn.Ct.App., 1983).

Part 3: Intercounty Enforcement of Support

§ 36-5-301. Purposes of Part.

The purposes of this part are to improve and extend the enforcement of duties of support on an intercounty basis.

HISTORY: (A. 1955, ch. 266, § 1; T.C.A., § 36.1001.)

§ 36-5-302. Definitions.

As used in this part unless the context requires otherwise:

(1) "COURT" means the circuit court and criminal court of this State. In addition, "COURT" also means the juvenile court in counties of this State having a population of six hundred thousand (600,000) or more according to the 1970 Federal census or any subsequent Federal census and in counties having a population of not less than seventy-four thousand (74,000) nor more than seventy-six thousand (76,000) and in counties having a population of not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 Federal census or any subsequent Federal census;

(2) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise;

(3) "INITIATING COUNTY" means any county in the State of Tennessee in which a proceeding pursuant to this reciprocal law is commenced;

(4) "LAW" includes both common and statute law;

(5) "OBLIGEE" means any person to whom a duty of support is owed;

(6) "OBLIGOR" means any person owing a duty of support;

(7) "RESPONDING COUNTY" means any county in the State of Tennessee in which any proceeding pursuant to the proceeding in the initiating county is or may be commenced; and

(8) "STATE" means the State of Tennessee.

HISTORY: (A. 1955, ch. 266, § 2; 1965, ch. 37, § 1; T.C.A., § 36.1002; A. 1985, ch. 377, § 1.)

§ 36-5-303. Remedies Additional.

The remedies provided in this part are in addition to and not in substitution for any other remedies.

HISTORY: (A. 1955, ch. 266, § 3; T.C.A., § 36.1003.)

§ 36-5-304. Obligor Bound Regardless of Residence of Obligee.

Duties of support arising under the laws of this State bind the obligor, present in any county in this State, regardless of the county of residence of the obligee in this State.

HISTORY: (A. 1955, ch. 266, § 4; T.C.A., § 36.1004.)

§ 36-5-305. What Duties Are Enforceable.

Duties of support applicable under this part are those imposed or imposable under the laws of the State of Tennessee.

HISTORY: (A. 1955, ch. 266, § 5; T.C.A., § 36.1005.)

§ 36-5-306. Rights of Department of Human Services.

Whenever the Department of Human Services, State of Tennessee, furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (A. 1955, ch. 266, § 6; impl.am.A. 1975, ch. 219, § 1; T.C.A., § 36.1006.)

§ 36-5-307. Jurisdiction.

(a) All duties of support are enforceable by petition irrespective of relationship between the obligor and obligee.

(b) Jurisdiction of all proceedings hereunder shall be vested in the circuit court. In addition, jurisdiction of all proceedings hereunder shall also be vested in juvenile courts in counties having a population of six hundred thousand (600,000) or more according to the 1970 Federal census or any subsequent Federal census, in counties having a population of not less than seventy-four thousand (74,000) nor more than seventy-six thousand (76,000) and in counties having a population of not less than eighty-three thousand three hundred (83,300) nor more than eighty-three thousand four hundred (83,400) according to the 1980 Federal census or any subsequent Federal census.

HISTORY: (A. 1955, ch. 266, § 7; T.C.A., § 36.1007; A. 1985, ch. 377, § 2.)

§ 36-5-308. Petition; Form and Contents.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the addresses and circumstances of the respondent, his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent including, but without limitation by enumeration, a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (A. 1955, ch. 266, § 8; T.C.A., § 36.1008.)

§ 36-5-309. District Attorney General To Represent Petitioner.

When one (1) county is acting as the responding county the District Attorney General shall represent the petitioner in any cause filed under the provisions of this part in any county within his judicial circuit, as set out in § 36-5-314.

HISTORY: (A. 1955, ch. 266, § 9; T.C.A., § 36.1009.)

§ 36-5-310. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without the appointment of a guardian ad litem.

HISTORY: (A. 1955, ch. 266, § 10; T.C.A., § 36.1010.)

§ 36-5-311. Duty of Court of Initiating County.

If the court of the county acting as the initiating county finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding court may obtain jurisdiction of the respondent or his property, the court shall so certify and shall cause three (3) copies of:

(1) The petition;

(2) Its certificate; and

(3) This part to be transmitted to the court in the responding county.

HISTORY: (A. 1955, ch. 266, § 11; T.C.A., § 36.1011.)

§ 36-5-312. Costs.

(a) There shall be a fee of ten dollars ($10.00) for the filing of every petition under the provisions of this part except as hereinafter provided.

(b) The filing fee shall be paid to the clerk of the court of the initiating county and shall be distributed as follows: four dollars ($4.00) to the clerk of the court of the initiating county, four dollars ($4.00) to the clerk of the responding county and two dollars ($2.00) to the sheriff of the responding county for service of the necessary process in the cause. The clerk of the court of the initiating county shall send a check or money order in the amount of six dollars ($6.00) to the clerk of the court of the responding county to cover the costs set out above in the responding county.

(c) Provided, however, that when a petition is filed by the Department of Human Services, State of Tennessee, under the provisions of § 36-5-306, the filing fee shall be waived.

(d) The respondent will be liable for such other and further costs of the cause together with the required filing fee upon the court finding him guilty as alleged in the petition.

(e) The clerk will, however, file any petition he receives from any initiating county and carry out the mandates of this part even though the above sum is not enclosed, but the clerk of court may delay the cause for the hearing until the sum is received.

HISTORY: (A. 1955, ch. 266, § 12; impl.am.A. 1975, ch. 219, § 1; T.C.A., § 36.1012.)

§ 36-5-313. Arrest of Respondent.

When the court of the county, acting either as an initiating or responding county, has reason to believe that the respondent may flee the jurisdiction it may:

(1) As an initiating county request in its certificate that the court of the responding county obtain the body of the respondent by appropriate process; or

(2) As a responding county, obtain the body of the respondent by appropriate process.

HISTORY: (A. 1955, ch. 266, § 13; T.C.A., § 36.1013.)

§ 36-5-314. Duty of Court of Responding County.

When the court of the county acting as the responding county receives from the court of an initiating county the aforesaid copies, it shall:

(1) Docket the case.

(2) Set a time and place for the hearing.

(3) Notify the respondent by having the sheriff serve process upon the respondent and leaving a copy of the petition with the respondent.

(4) Notify the District Attorney General of the filing of the petition by leaving him a copy thereof.

(5) Take such other action as is necessary in accordance with the laws of this State to obtain jurisdiction over the respondent.

HISTORY: (A. 1955, ch. 266, § 14; T.C.A., § 36.1014.)

§ 36-5-315. Failure To Obtain Jurisdiction.

If a court of the county acting as a responding county is unable to obtain jurisdiction of the respondent or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating county, and shall on its own initiative use all means at its disposal to trace the respondent or his property, and shall hold the case pending the receipt of more accurate information or an amended petition from the court in the initiating county.

HISTORY: (A. 1955, ch. 266, § 15; T.C.A., § 36.1015.)

§ 36-5-316. Consideration of Petition of Initiating County; Presumption.

(a) The courts of this State are to keep in mind the intent and purposes of this part as set out in § 36-5-301; therefore, the court shall consider and recognize the petitions of the initiating county as certified by the courts as set out in § 36-5-311.

(b) The introduction of the petition from the initiating county when duly certified, shall create a presumption of the truthfulness of the facts alleged therein and prima facie evidence of the liability of the respondent and shall shift the burden of proof to such respondent.

HISTORY: (A. 1955, ch. 266, § 16; T.C.A., § 36.1016.)

§ 36-5-317. Order of Support.

If the court of the responding county finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. The provisions of part 4 of this chapter and § 50-2-105 shall apply to these proceedings.

HISTORY: (A. 1955, ch. 266, § 17; T.C.A., § 36.1017; A. 1985, ch. 477, § 15.)

§ 36-5-318. Transmission of Copies of Orders to Initiating County.

The court of the county acting as a responding county shall cause to be transmitted to the court of the initiating county a copy of all orders of support or for reimbursement therefor.

HISTORY: (A. 1955, ch. 266, § 18; T.C.A., § 36.1018.)

§ 36-5-319. Enforcement Powers of Responding County.

In addition to the foregoing powers, the court of the responding county has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent;

(2) To require the respondent to make payments at specified intervals to the clerk of the court acting as the responding county; and

(3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (A. 1955, ch. 266, § 19; T.C.A., § 36.1019.)

§ 36-5-316. Consideration of Petition of Initiating County; Presumption.

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HISTORY: (A. 1955, ch. 266, § 17; T.C.A., § 36.1017; A. 1985, ch. 477, § 15.)

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(2) To require the respondent to make payments at specified intervals to the clerk of the court acting as the responding county; and

(3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (A. 1955, ch. 266, § 19; T.C.A., § 36.1019.)

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TEXAS

TEX. FAMILY CODE ANN. §§ 21.01 to 21.66

Subchapter A. General Provisions

§ 21.01. Short Title.

This chapter may be cited as the Uniform Reciprocal Enforcement of Support Act.

HISTORY: (A. 1965, 59th Leg., p. 1568, ch. 679, § 679, § 41; Vernon's Ann. Civ. St. art. 2328b-4, § 41.)

§ 21.02. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (A. 1951, 52nd Leg., p. 643, ch. 377, § 1; Vernon's Ann. Civ. St. art. 2328b-1, § 1; A. 1965, 59th Leg., p. 1561, ch. 679, § 1; Vernon's Ann. Civ. St. art. 2328b-4, §1.)

Cases

In general.

Although because of lack of sufficient contact of Alabama father with Texas courts the latter were without power to issue a binding support decree against him, necessity for a separate adjudication of support claim in Alabama did not present an insuperable obstacle to adjudication of conservatorship in Texas as the mother and child resided in Texas. Perry v. Ponder (Civ.App.1980) 604 S.W.2d 306.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to provide a simplified, consistent and effective mechanism for interstate enforcement of support obligations and was designed to avoid requiring obligee to travel to distant States to litigate questions of support obligations. O'Halloran v. O'Halloran (Civ.App.1979) 580 S.W.2d 870.

This chapter was designed to provide economical and expedient means of enforcing support orders for parties who are located in different States or jurisdictions. Raney v. Raney (Civ.App. 1976) 536 S.W.2d 617.

§ 21.03. Definitions.

In this chapter, unless the context requires a different definition:

(1) "STATE" includes any State, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been

enacted and includes a foreign nation or a State of a nation declared to have a similar reciprocal law as provided in § 21.07 of this Code.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the District Court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, including duties imposed by ch. 12 or 13 of this Code, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise, but shall not include alimony for a former wife.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means any person to whom a duty of support is owed and a State or political subdivision thereof.

(9) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any territory covered by the provisions of this chapter.

(10) "SUPPORT ORDER" means any judgment, decree, or order of support, whether temporary or final, whether subject to modification, revocation, or remission, regardless of the kind of action in which it is entered.

(11) "RENDERING STATE" means any State in which a support order is originally entered.

(12) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(13) "REGISTER" means to record in the Registry of Foreign Support Orders.

(14) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

(15) "PROSECUTING ATTORNEY" means the criminal District Attorney, an attorney designated by the court, or the county attorney, or the District Attorney where there is no criminal District Attorney, attorney designated by the court, or county attorney.

(16) "CUSTODY" includes managing conservatorship.

HISTORY: (A. 1951, 52nd Leg., p. 643, ch. 377, § 2; Vernon's Ann. Civ. St. art. 2328b-1, § 2; A. 1965, 59th Leg., p. 1561, ch. 679, § 2; A. 1969, 61st Leg., p. 1698, ch. 553, § 1; Vernon's Ann. Civ. St. art. 2328b-4, § 2.)

Cases

Prosecuting attorney.

A District Attorney in a district where each county had its own separate county attorney was not designated by § 2(o) of Vernon's Ann. Civ. St. art. 2328b-4 repealed as a "prosecuting attorney." The county attorney should act in such matters where a county attorney exists. Op.Atty.Gen. 1970, No. M-662.

The County Attorney of Matagorda County did not have the duty to act as "prosecuting attorney" under the Uniform Reciprocal Enforcement of Support Act. Op.Atty.Gen. 1966, No. C-636.

§ 21.04. Remedies.

The remedies herein provided are in addition to and not in substitution for any other remedies even though prior orders of support exist in this State or any other jurisdiction.

HISTORY: (Am.A. 1981, 67th Leg., p. 945, ch. 356, § 2, eff. Aug. 31, 1981.)

Cases

Construction and application.

Arrearages in child support owed to divorced wife by divorced husband under New York divorce decree were vested in divorced wife and could not have been reduced by Texas court in divorced wife's action brought in Texas pursuant to Uniform Reciprocal Enforcement of Support Act (this chapter). Sheres v. Engleman (D.C.1982) 534 F.Supp. 286.

Order by Texas court reducing future child support payments and arrearages owed by divorced husband in action brought by divorced wife to enforce New York child support order pursuant to Uniform Reciprocal Enforcement of Support Act (this chapter) did not render original New York order of divorce and support void and did not prevent Federal court with jurisdiction over the parties from enforcing original order, and thus enforcement of original New York order would be ordered. Id.

Provisions of Uniform Reciprocal Enforcement of Support Act (this chapter) do not purport to authorize levy of execution upon homestead or other exempt property nor do they conflict in any way with status of property constitutionally exempt from forced sale. In interest of Solomon (Civ.App.1977) 546 S.W.2d 129, ref. n.r.e.

Remedy of collection of child support under Uniform Reciprocal Support Act (this chapter) and Texas Family Code is in addition to, and not in substitution for, any other remedies. Strader v. Strader (Civ.App.1974) 517 S.W.2d 905.

Res judicata.

Action by Texas court under Uniform Reciprocal Enforcement of Support Act (this chapter) in reducing both future child support payments and arrearages owed by divorced husband was not res judicata with respect to power of Federal court with subject matter and personal jurisdiction to enforce original New York child support order. Sheres v. Engleman (D.C.1982) 534 F.Supp. 286.

§ 21.05. Extent of Duty of Support.

Duties of support arising under the law of this State, when applicable under § 21.21 of this Code, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (A. 1951, 52nd Leg., p. 644, ch. 377, § 4; Vernon's Ann. Civ. St. art. 2328b-1, § 4; A. 1965, 59th Leg., p. 1562, ch. 679, § 4; Vernon's Ann. Civ. St. art. 2328b-4, § 4.)

§ 21.06. Uniformity of Interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (A. 1965, 59th Leg., p. 1568, ch. 679, § 40; Vernon's Ann. Civ. St. art. 2328b-4, § 40.)

§ 21.07. Declaration of Reciprocity: Other Nations.

(a) If the Attorney General finds that reciprocal provisions are available in a foreign nation or the State of a foreign nation for the enforcement of support orders issued in this State, the Attorney General may declare the foreign nation or a State of a foreign nation to be a reciprocating State for the purpose of this chapter.

(b) A declaration made under subsection (a) of this section may be revoked by the Attorney General.

(c) A declaration by the Attorney General made under subsection (a) of this section may be reviewed by the court in an action under this title.

HISTORY: (A. 1975, 64th Leg., p. 1270, ch. 476, § 48, eff. Sept. 1, 1975.)

§ 21.08. Venue.

Venue for initiating cases under this chapter is in the county of the residence of the minor child for whom support is sought. Venue in all responding cases under this chapter is in the county of the residence of the obligor.

HISTORY: (A. 1981, 67th Leg., p. 945, ch. 356, § 3, eff. Aug. 31, 1981.)

Subchapter B. Criminal Enforcement

§ 21.11. Interstate Rendition.

(a) The Governor of this State may:

(1) Demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) Surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State.

(b) The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to his section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (A. 1951, 52nd Leg., p. 644, ch. 377, § 5; Vernon's Ann. Civ. St. art. 2328b-2, § 5; A. 1965, 59th Leg., p. 1562, ch. 679, § 5; Vernon's Ann. Civ. St. art. 2328b-4, § 5.)

Cases

In general.

Section of Federal Constitution (U.S.C.A. Const. art. 4, § 2, ch. 2) authorizing extradition of a fugitive and Federal implementing statute (18 U.S.C.A. § 3182) did not deny Texas, under Vernon's Ann. Civ. St. art. 2328b-4 (repealed), the power to deliver to California an accused who, since leaving California, had allegedly become delinquent in making support payments in California for his minor children, and who was a nonfugitive. Miller v. Decker (C.A.1969) 411 F.2d 302.

Extradition hearing should not be expanded so as to inquire into mitigating circumstances, or guild or innocence; father's testimony that although he was behind in his payments, he had contributed to his children's support, and that his wife was acting out of spite did not justify denial of extradition on charge of failure to provide support. Ex parte Jennings (Cr.App.1968) 434 S.W.2d 673.

Question of whether defendant's failure to adequately provide for the support of his children who lived with his divorced wife in another State was wilfull or intentional went to the merits of charge of abandonment and nonsupport of his children and could not be inquired into by proceeding in asylum State. Ex parte Gilbreath (1958) 166 Cr.R. 64, 311 S.W.2d 851.

Complaint of demanding State charging defendant with crime of abandonment and nonsupport of his minor children, committed in demanding State, authorized defendant's extradition to such State. Id.

Validity of prior laws.

Where caption of Acts 1965, 59th Leg., p. 1561, ch. 679, disclosed contents of bill and the legislacion contained only the one purpose of Uniform Reciprocal Enforcement of Support, whether it was interstate or interdistrict within a State, said statute did not contravene provisions of Const. art. 3, § 35, relating to caption of bill. Beck v. Winegeart (Civ.App.1971) 471 S.W.2d 422.

§ 5 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed), providing that Governor could surrender person charged in demanding State with failure to provide for support although the accused was not in demanding State at time of commission of crime, was a valid

exercise of the State's sovereign powers and was valid as an act of comity to a sister State and was not unconstitutional. Ex parte Coleman (1952) 157 Cr.R. 37, 245 S.W.2d 712.

§ 5 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed), providing that Governor could surrender person charged in demanding State with crime of failing to provide for support although accused was not in demanding State at time of commission of crime, did not purport to punish the fugitive for the offense, and hence issuance of executive warrant under that Act did not give an invalid ex post facto effect to the Act though the Act became effective after commission of the alleged offense upon which the demand for extradition was based. Id.

§ 5 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed), providing that Governor could surrender person charged in demanding State with crime of failing to provide for support although accused was not in demanding State at time of commission of crime, was not intended by legislature to be repealed by Vernon's Ann. Code Civ. Proc. art. 1008a (now art. 51.13), passed 13 days later and providing that extradition demand shall not be recognized unless alleging that accused was present in demanding State at time of commission of alleged crime, not withstanding clause repealing inconsistent acts, and Governor could properly issue executive warrant against person charged in California with failure to provide for his child though California Governor's demand did not allege that accused was present in demanding State at time of commission of alleged crime. Id.

Presence in demanding State.

In proceeding to extradite father for purpose of answering complaint of failure to provide support, father's testimony that he had never been in demanding State was not a defense to charge. Ex parte Jennings (Cr.App.1968) 434 S.W.2d 673.

Petitioner could properly be remanded to custody for extradition though he was not physically present in Oklahoma at time he was alleged to have abandoned children there as recited in executive warrant. Ex parte Hagar (Cr.App.1968) 434 S.W.2d 675.

Vernon's Ann. Civ. St. art. 2328b-2 (repealed), providing that Governor may surrender person charged in demanding State with crime of failing to provide for support although accused was not in demanding State at time of commission of crime, and Vernon's Ann. Code Civ. Proc. art. 1008a (now art. 51.13), providing that demand for extradition shall not be recognized unless alleging that acused was present in demanding State at time of commission of alleged crime, and carrying a general repealing clause for all inconsistent acts and parts of acts, were in pari materia because each dealt with question of extradition and was enacted by same legislature, becoming effective only 13 days apart. Ex parte Coleman (1952) 157 Cr.R. 37, 245 S.W.2d 712.

Requisition.

Allegations of requisition papers did not contain fatal variance although complaints annexed to application for requisition alleged that defendant was in Nebraska when he failed to support minor children, and application for extradition alleged that defendant committed such offense in Texas, resulting in crime in Nebraska, under Vernon's Ann. Civ. St. art. 2328b-2 (repealed). Ex parte Brito (1962) 172 Cr.R. 409, 358 S.W.2d. 122.

One charged in another State with crime of deserting and abandoning minor children was subject to extradition under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3, though requisition was not predicated upon § 5 of art. 2328b-2 or Extradition Act,

Vernon's Ann. Code Civ. Proc. art. 1008a (now art. 51.13), by name or number or other allegation, but recited that in issuing requisition, Governor of demanding State was acting by virtue of the Constitution and laws of the United States. Ex parte Oxford (1952) 157 Cr.R. 512, 249 S.W.2d 917.

One charged in another State with crime of deserting and abandoning minor children was subject to extradition under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3, though affidavits accompanying requisition did not State that he was a fugitive from justice or was in demanding State at time of commission of offense charged. Id.

Warrant.

Executive warrant, issued by Governor and reciting that petitioner stood charged by information supported by affidavit accompanied by warrant with crime of child abandonment, made out prima facie case authorizing remand of petitioner to custody for extradition. Ex parte Hagar (Cr.App.1968) 435 S.W.2d 675.

Executive warrant which was issued by Governor of Texas and which reciting that accused stood charged by complaint in warrant before proper authorities in Indiana with offense of child desertion made out a prima facie case authorizing remand of accused to custody for extradition. Ex parte Chapman (Cr.App.1968) 435 S.W.2d 529.

Habeas corpus petitioner was properly remanded to custody for extradition to California to stand trial for offense of omitting to provide for minor child where an executive warrant, regular on its face, was introduced thereby making a prima facie case authorizing extradition. Ex parte Smith (Cr.App.1965) 391 S.W.2d 433.

Executive warrant directing arrest of specified individual and his delivery to agent of another State made out prima facie case authorizing remand of the individual to custody for extradition, where warrant was regular on its face. Ex parte Brito (1962) 172 Cr.R. 409, 358 S.W.2d 122.

Review.

In habeas corpus proceeding for discharge from arrest under executive warrant issued upon requisition of California Governor, fact that trial court based its decision denying the relief on the Extradition Act, Vernon's Ann Code Civ. Proc. art. 1008a (now art. 51.13), did not bind court of criminal appeals to consider only the Extradition Act, and it could affirm the decision on basis of Vernon's Ann. Civ. St. repealed arts. 2328b-1 and 2328b-2. Ex parte Coleman (1952) 157 Cr.R. 37, 245 S.W.2d 712.

§ 21.12. Conditions of Interstate Rendition.

(a) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least 60 days prior thereto the obligee brought an action for the support under this chapter, or that the bringing of an action would be of no avail.

(b) When under this chapter or a substantially similar act, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may

call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective.

(c) If any action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(d) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(e) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (A. 1951, 52nd Leg., p. 644, ch. 377, § 6; Vernon's Ann. Civ. St. art. 2328b-2, § 6; A. 1965, 59th Leg., p. 1563, ch. 679, § 6; Vernon's Ann. Civ. St. art. 2328b-4, § 6.)

Cases

In general.

In absence of showing that petitioner had complied with support order of Alabama court, § 6(e) of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), permitting Governor to decline to honor extradition demand, was inapplicable. Ex parte Hagar (Cr.App.1968) 434 S.W.2d 675.

Petitioner's submission to jurisdiction of any court ordering support was immaterial with respect to his amenability to prosecution by authorities in another State for neglecting to provide for minor children and did not affect his amenability to extradition to complaining State. Id.

Order denying relief prayed for in petition for support did not relieve father from extradition to another State to stand trial for crime of desertion. Ex parte Miller (Cr.App.1965) 382 S.W.2d 937.

§ 6 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed), to effect that obligor who submitted to jurisdiction of court of another State and complied with court's order of support, should be relieved of extradition for desertion or nonsupport during period of such compliance, relieved obligor from extradition where court ordered support and there was compliance with order, but it was not applicable where no order for support was entered and did not apply where support was denied. Id.

Defendant, who testified that he had complied with court support order for 15 weeks but had paid nothing since, was extraditable on California charge of failing to support a minor child, and was not entitled to benefit of § 6 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed), granting asylum as long as person complied with court order. Ex parte Smith (Cr.App.1965) 391 S.W.2d 433.

A father was not entitled to relief from extradition under § 6 of Vernon's Ann. Civ. St. art. 2328b-2 (repealed) on ground that Texas court had, at instigation of another State, exercised jurisdiction over him under such act prior to institution of extradition

proceedings, where he had been duly served with citation but had filed no answer, and no order for support had been entered by Texas court. Ex parte Brito (1962) 172 Cr.R. 409 358 S.W.2d 122.

§§ 21.13 to 21.20. Reserved for Expansions.

Subchapter C. Civil Enforcement

§ 21.21. Choice of Law.

Duties of support applicable under this chapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought; but shall not include alimony for a former wife. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (A. 1951, 52nd Leg., p. 644, ch. 377, § 7; Vernon's Ann. Civ. St. art. 2328b-3, § 7; A. 1965, 59th Leg., p. 1563, ch. 679, § 7; Vernon's Ann. Civ. St. art. 2328b-4, § 7.)

Cases

In general.

Where former wife brought proceeding under Indiana Reciprocal Enforcement of Support Act and this chapter to establish child support obligation on the part of former husband and where former husband's duty to support his child existed independently of Indiana divorce action, it was irrelevant whether former husband was properly served with citation in the Indiana divorce case. Etchison v. Greathouse (Civ.App.1980) 596 S.W.2d 233.

A California statute imposing liability upon children of persons confined in State hospitals for their support and maintenance could not create a legal obligation upon a citizen of Texas who was not a citizen of California when the obligation arose nor could it make the obligation a continuing one after removal from California even though it attached to him while a resident of California. State of California v. Copus, (1958) 158 T. 196, 309 S.W.2d 227, 67 A.L.R.2d 758, cert. den. 78 S.Ct. 1006, 356 U.S. 967, 2 L.ED.2d 1074.

Where California statute imposed liability upon children of persons confined in State hospitals for their support and maintenance, and § 2 of Vernon's Ann. Civ. St. art. 3196a relating to support of persons so confined did not impose liability on children, liability of son who moved from California to Texas for support of mother confined in California hospital as a mental patient could not be enforced against the son for support rendered to the mother, after the son moved from California and became domiciled in Texas. Id.

Law governing.

For purposes of extradition proceeding, the laws of Oregon, the demanding State, would be presumed to be the same as the laws of Texas in absence of proof to the contrary appearing in the record, and where failing to support minor children, first offense, was a misdemeanor in Texas, and affidavit did not show that relator was wanted

for prosecution as a second offender in Oregon, the offense was prosecutable by information and extradition was thus authorized. Ex parte Wiggins (Cr.App.1968) 435 S.W.2d 517.

Canal Zone statutes requiring man to support his illegitimate child were not applicable in action in Texas by woman against man for breach of alleged promise to contribute to support of illegitimate child, though woman became pregnant in Canal Zone. Moore v. Bramlett (Civ.App.1967) 415 S.W.2d 526, ref. n.r.e.

Kentucky law was to be applied to determine duty of father, a Texas resident, to support his illegitimate child where mother brought action under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3 to enforce Kentucky support judgment, rendered under its Bastardy Act, and chose Kentucky law under the choice of law given her by § 7 of art. 2328b-3 (repealed). Bjorgo v. Bjorgo (Sup.1966) 402 S.W.2d 143.

In action under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3, law of respondent State controlled with respect to age at which minor ceased to be entitled to child support and whether duty of support existed. Neff v. Johnson (Civ.App.1965) 391 S.W.2d 760.

Under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3, laws of responding State, where individual who was allegedly liable for support resides, were to be applied. Freeland v. Freeland (Civ.App.1958) 313 S.W.2d 943.

§ 21.22. State or Political Subdivision Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (A. 1951, 52nd Leg., p. 645, ch. 377, § 8; A. 1953, 53rd Leg., p. 908, ch. 374, § 2; Vernon's Ann. Civ. St. art. 2328b-3, § 8; A. 1965, 59th Leg., p. 1563, ch. 679, § 8; Vernon's Ann. Civ. St. art. 2328b-4, § 8.)

§ 21.23. How Duties of Support Are Enforced.

All duties of support, including arrearages, are enforceable by a suit under this chapter, irrespective of the relationship between the obligor and the obligee.

HISTORY: (A. 1951, 52nd Leg., p. 645, ch. 377, § 9; Vernon's Ann. Civ. St. art. 2328b-3, § 9; A. 1965, 59th Leg., p. 1563, ch. 679, § 9; Vernon's Ann. Civ. St. art. 2328b-4, § 9.)

Cases

In general.

Where former wife brought proceeding under Indiana Reciprocal Enforcement of Support Act and this chapter to establish child support obligation on the part of former husband and where former husband's duty to support his child existed independently of

Indiana divorce action, it was irrelevant whether former husband was properly served with citation in the Indiana divorce case. Etchison v. Greathouse (Civ.App.1980) 596 S.W.2d 233.

In suit for enforcement of child support agreement which was made part of divorce judgment rendered in Germany, trial court had jurisdiction to render judgment for future child support. Uhl v. Uhl (Civ.App.1977) 546 S.W.2d 129, ref. n.r.e.

Uniform Reciprocal Enforcement of Support Act (this chapter) authorizes judgment for arrearages. In Interest of Solomon (Civ.App.1977) 546 S.W.2d 129, ref. n.r.e.

Father may be ordered to support child born of a marriage which has been annulled and it is not necessary that there be a divorce suit. Benson v. Benson (Civ.App.1968) 368 S.W.2d 125, ref. n.r.e.

Under Vernon's Ann. Civ. St. art. 2328b-4 (repealed), trial court properly ordered divorced father to make child support payments where divorce decree of another State had ordered such payments, the trial court determined that father was employed, and there was no evidence of change in father's ability to make such payments. Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

Father was entitled to a hearing in Texas court on his duty of support and the extent thereof where mother sought to enforce in Texas, under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3, a Kentucky judgment requiring him to support his illegitimate child. Bjorgo v. Bjorgo (Sup.1966) 402 S.W.2d 143.

Res judicata.

Final judgment, which was entered in Washington proceeding on divorced wife's petition for support under this chapter and in which wife was denied all relief including a denial of a judgment for all arrearages of child support, was res judicata, as to the issues determined in such proceeding, so as to preclude relitigation of such issues in subsequent proceeding in which wife filed cross action for judgment against divorced husband for delinquent child support payments. Howard v. Brizendine (Civ.App.1977) 546 S.W.2d 136.

§ 21.24. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the District Court and in any other court authorized to order support for children.

HISTORY: (Am.A. 1981, 67th Leg., p. 945, ch.396, § 4, eff. Aug. 31, 1981.)

Cases

In general.

County court had jurisdiction to hear action to collect arrearages in support, though amount in controversy exceeded $10,000 jurisdictional limit in actions for debt, under Vernon's Ann. Civ. St. art. 1970-360, § 3(b), granting county court additional jurisdiction to hear causes and matters under Uniform Reciprocal Enforcement of Support Act (this chapter). Byrd v. Texas Dept. of Human Resources, 673 S.W.2d 640 (Tex.App.4 Dist.1984).

Order by Texas court reducing future child support payments and arrearages owed by divorced husband in action brought by divorced wife to enforce New York child support order pursuant to Uniform Reciprocal Enforcement of Support Act (§ 21.01 et seq.) did not render original New York order of divorce and support void and did not prevent Federal court with jurisdiction over the parties from enforcing original order, and thus enforcement of original New York order would be ordered. Sheres v. Engleman (D.C.1982) 534 F.Supp. 286.

Virginia court had continuing jurisdiction over divorce action, and if father was entitled to relief from financial obligations imposed upon him by that court, he had but to seek relief there, but trial court lacked jurisdiction in Uniform Reciprocal Enforcement of Support Act (this chapter) proceeding to reduce or to increase support payments. Littrell v. Littrell (Civ.App.1980) 601 S.W.2d 207.

Uniform Reciprocal Enforcement of Support Act (this chapter) was designed to enforce foreign support orders in Texas by establishment of uniform procedural device, and to permit responding State to modify order which it is called upon to enforce would thwart laudable objectives of framers of legislation; under the Act, foreign support orders are to be enforced in the domicile of the obligor without involving other issues in parent-child relationship, including modification of terms of support orders. Id.

The first Texas court entertaining a suit under the Uniform Reciprocal Enforcement of Support Act (this chapter) has continuing and exclusive jurisdiction so that an order of contempt and commitment of relator by a second Texas court was void. In re Miller (Civ.App.1979) 583 S.W.2d 872.

Divorce which occurred prior to effective date of § 11.01(5), defining "suit affecting the parent-child relationship" for purpose of § 11.05 providing that continuing jurisdiction is afforded to court which has entertained such a suit was not such a suit, and thus divorcing court did not acquire exclusive continuing jurisdiction for purposes of proceedings under Uniform Reciprocal Enforcement of Support Act, and thus juvenile court properly proceeded to enforce divorced wife's claim under the Act. In Interest of Solomon (Civ.App.1977) 546 S.W.2d 129, ref. n.r.e.

Where trial court had acquired jurisdiction over person of relator, who brought habeas corpus proceeding challenging judgment finding him in contempt for violation of Louisiana child support order, and relator's complaints were merely that trial court erred in admission of testimony or failed to follow implicitly each provision of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), such defects, at most, constituted reversible errors which could have been corrected on direct appeal and did not divest trial court of jurisdiction to enter order; judgment finding relator in contempt was not void and was not subject to collateral attack in habeas corpus proceedings. Ex parte Gaston (Civ.App.1973) 501 S.W.2d 447.

Where parties were divorced in the court of domestic relations of Harris County, Texas and mother awarded custody of the two minor children born of the marriage, where mother subsequently moved to Wisconsin and there established her residence, and where she then filed an action in Wisconsin asserting that she and the children were entitled to support under the provisions of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), the Harris County District Court, to which the action was transmitted, had jurisdiction of the case, notwithstanding father's contention that mother's remedy was a contempt action, not a new action. Westphal v. Palmer (Civ.App.1972) 480 S.W.2d 277.

Res judicata.

Action by Texas court under Uniform Reciprocal Enforcement of Support Act (§ 21.01 et seq.) in reducing both future child support payments and arrearages owed by divorced husband was not res judicata with respect to power of Federal court with subject matter and personal jurisdiction to enforce original New York child support order. Sheres v. Engelman (D.C.1982) 534 F.Supp. 286.

§ 21.25. Petition for Support.

The petition shall be verified and shall State the name and, so far as known to the plaintiff, the address and circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff shall attach to the petition a certified copy of the court order, decree, or judgment of support sought to be enforced, whether interlocutory or final, if any. The plaintiff may include in or attach to the petition any information which may help in locating or identifying the defendant, such as a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (Am.A. 1981, 67th Leg., p. 945, ch. 356, § 5, eff. Aug. 31, 1981.)

§ 21.26. Representation of Plaintiff.

The prosecuting attorney, upon the request of the court or the Texas Department of Human Services, shall represent the plaintiff in any proceeding under this chapter.

HISTORY: (Am.A. 1981, 67th Leg., p. 946, ch. 356, § 6, eff. Aug. 31, 1981; A. 1981, 67th Leg., p. 2271, ch. 551, § 8, eff. Aug. 31, 1981; A. 1985, 69th Leg., p. 2177, ch. 264, § 56, eff. Aug. 26, 1985.)

§ 21.27. Minor Petitioner.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (A. 1965, 59th Leg., p. 1564, ch. 679, § 13; Vernon's Ann. Civ. St. art. 2328b-4, § 13.)

Cases

In general.

Minor child, on whose behalf action for child support was instituted by former wife, was not privy to prior divorce action in which child's right of support was not adjudicated and in which decree reciting that no child or children had been born to or adopted by parties during marriage was entered, and was therefore not bound by such recitation. Charvis v. Charvis (Civ.App.1976) 529 S.W.2d 814.

§ 21.28. Court of this State as Initiating State.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of the petition, its certificate, and this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (Am.A. 1981, 67th Leg., p. 946, ch. 356, § 7, eff. Aug. 31, 1981; A. 1981, 67th Leg., p. 2271, ch. 551, § 9, eff. Aug. 31, 1981.)

Cases

In general.

Statements made in the certificate issued by initiating court in Uniform Reciprocal Enforcement of Support Act proceeding, based on plaintiff's petition and without notice to defendant, are not to be considered by court of responding State as evidence of facts alleged in petition. Neff v. Johnson (Civ.App.1965) 391 S.W.2d 760; Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

Function of certificate of court of initiating State in action under Uniform Reciprocal Enforcement of Support Act was to establish that such court upon examination of plaintiff's petition had found such probable duty of support as to warrant transmittal of petition, certificate, and copy of Support Act to court of responding State which then held hearing after proper notice to determine whether duty of support actually existed, and if so responding State court entered proper orders. Id.

§ 21.29. Costs.

(a) There shall be no filing fee or other costs taxable to the obligee except as authorized by subsection (b) of this section, but a court of this State, acting either as an initiating or responding State, may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant or either and a reasonable fee to an attorney or the prosecuting attorney's office that represents the petitioner, be paid by the obligor or the county.

(b) The court may order that a portion, not to exceed 25 percent and not to exceed $500, of each child support payment ordered under this chapter be deducted and paid over to the registry of the court or an agency designated under Part D, Title IV, of the Social Security Act (42 U.S.C. § 651 et seq.). The deduction shall be made only until the amount of the costs authorized by subsection (a) of this section have been paid in full. This

subsection does not authorize a deduction from any child support payment order to be made for the benefit of a child who qualifies for and is receiving financial assistance under 42 U.S.C. § 602.

HISTORY: (Am.A. 1983, 68th Leg., p. 3849, ch. 604, § 1, eff. June 19, 1983.)

Cases

In general.

Where Texas court entered contempt judgment, which ordered relator confined in jail until he paid, among other things, $500 attorney's fee taxed as costs, attorney's fee was but part of procedural remedy for enforcing substantive rights arising from California court's order requiring relator to make certain support payments for benefit of his two children, and fee allowed, as well as other costs of proceeding, was incidental to and part of payments necessary for support to minors and, therefore, was properly allowed. Ex parte Helms (1953) 152 T. 480, 259 S.W.2d 184.

In contempt proceeding to enforce support payments, defendant's constitutional freedom from imprisonment for debt is not violated by judgment which requires defendant to remain in jail until an attorney's fee allowed complainant and all costs are paid. Id.

§ 21.30. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction, it may:

(1) As an initiating State, request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the defendant by appropriate process.

HISTORY: (A. 1965, 59th Leg., p. 1564, ch. 679, § 16; Vernon's Ann. Civ. St. art. 2328b-4, § 16.)

§ 21.31. State Information Agency.

The Texas Department of Human Services is the State Information Agency under this chapter, and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiciton under this chapter and transmit the same to the State Information Agency of every other State which has adopted this chapter or a substantially similar act; and

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

HISTORY: (Am.A. 1981, 67th Leg., p. 946, ch. 356, § 8, eff. Aug. 31, 1981; A. 1981, 67th Leg., p. 2271, ch. 551, § 10, eff. Aug. 31, 1981; A. 1985, 69th Leg., p. 2177, ch. 264, § 57, eff. Aug. 26, 1985.)

§ 21.32. Duty of State as Responding State.

(a) After the court of this State, acting as a responding State, has received from the court of the initiating State the aforesaid copies, the clerk of the court shall docket the case and notify the district judge or the judge of the domestic relations court, or both judges, of his action.

(b) It shall be the duty of the prosecuting attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the defendant or his property and shall request the clerk of the court to set a time and place for a hearing.

HISTORY: (Am.A. 1981, 67th Leg., p. 946, ch. 356, § 9, eff. Aug. 31, 1981; A. 1981, 67th Leg., p. 2271, ch. 551, § 11, eff. Aug. 31, 1981.)

§ 21.33. Duty of Prosecuting Attorney in Responding State.

(a) The prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the defendant or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(b) If the defendant or his property is not found in the judicial district and the prosecuting attorney discovers by any means that the defendant or his property may be found in another judicial district of this State or in another State, he shall so inform the court; and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other judicial district or to a court in the other State or to the information agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon, both the court of the judicial district and any court of this State receiving the documents and the prosecuting attorney have the same powers and duties under this chapter as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(c) If the prosecuting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

HISTORY: (A. 1965, 59th Leg., p. 1565, ch. 679, § 19; Vernon's Ann. Civ. St. art. 2328b-4, § 19.)

§ 21.34. Continuation of the Case.

If the plaintiff is absent from the responding State and the defendant presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (A. 1965, 59th Leg., p. 1565, ch. 679, § 20; Vernon's Ann. Civ. St. art. 2328b-4, § 20.)

Cases

In general.

Where, in Uniform Reciprocal Enforcement of Support Act (this chapter) action, husband made no bill of exceptions when attempt to raise issue of paternity was disallowed, and no evidence was presented to raise defense of nonaccess, trial court was not obligated to continue case. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

Where evidence constituting an offense was not presented by former husband, he was not entitled to continuance of support obligation proceeding pursuant to this section. Etchison v. Greathouse (Civ.App.1980) 596 S.W.2d 233.

Review.

Where husband did not move for continuance in Uniform Reciprocal Enforcement of Support Act (this chapter) action when attempt to raise issue of paternity was disallowed, nothing was preserved for review as to whether trial court should have continued case until wife was present in responding State. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

§ 21.35. Testimony of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. The defendant is a competent witness in the responding court and may be compelled to testify to any relevant matter, including marriage and other relevant matter establishing the duty of support or the ability to contribute support, which testimony may be the only evidence that is the basis for entry of an order.

HISTORY: (Am.A. 1981, 67th Leg., p. 946, ch. 356, § 10, eff. Aug. 31, 1981.)

§ 21.36. Rules of Evidence; Presumptions.

(a) In any hearing under this chapter, the court shall be bound by the same rules of evidence that bind the District Court.

(b) In any suit brought under this chapter, if the initiating court certifies that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction over the defendent or his property, the certified petition shall be admitted in the responding State as prima facie evidence that the defendant's duty to support exists.

(c) In a contested case, it is presumed:

(1) That the obligor and the obligee have an equal duty of support; or

(2) If there is a prior support order, that the most recent order correctly designates the current amount of support and duty of support.

HISTORY: (Am.A. 1981, 67th Leg., p. 947 ch. 356, § 11, eff. Aug. 31, 1981.)

Cases

In general.

Subsection (b) of this section providing for certified petition to be admitted in responding State as prima facie evidence that defendant's duty to support exists outlines requisites necessary for petition to be evidence which is relevant, competent, and materially sufficient to establish prima facie case in URESA action and therefore is not in conflict with subsection (a) of this section providing for court, in hearing under Uniform Reciprocal Enforcement of Support Act (this chapter) to be bound by same rules of evidence that bind District Court, or with such rules of evidence. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

In view of this section to effect that court shall be bound by same rules of evidence that bind District Court, trial court is obligated to apply usual rules of evidence and may not consider incompetent evidence by analogy to specialized situations such as summary judgments and sworn accounts. Lewallen v. Hardin (Civ.App.1978) 563 S.W.2d 356.

Continuance.

Where, in Uniform Reciprocal Enforcement of Support Act (this chapter) action, husband made no bill of exceptions when attempt to raise issue of paternity was disallowed, and no evidence was presented to raise defense of nonaccess, trial court was not obligated to continue case. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

Witnesses.

Uniform Reciprocal Enforcement of Support Act (this chapter) action is an action civil in nature to which right under U.S.C.A. Const. Amendment 6 to confront witnesses does not apply. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

Petition.

Under Uniform Reciprocal Enforcement of Support Act (this chapter) plaintiff's petition and initiating State's certification that petition sets forth facts from which duty of support may be determined serve merely to establish prima facie case, and such may be rebutted by defendant. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

Under Uniform Reciprocal Enforcement of Support Act (this chapter) function of certificate of court of initiating State that petition sets forth facts from which duty of support may be determined is to establish that such court, upon examination of plaintiff's petition, has found such probable duty of support as to warrant transmittal of petition and certificate to court of responding State; court of responding State then holds hearing; after proper notice or service of process upon defendant, to determine whether duty of support actually exists. Id.

Review.

Where, at show cause hearing on mother's petition for child support under Uniform Reciprocal Enforcement of Support Act (this chapter) father was called as adverse witness and testified to essentially same facts that were alleged in mother's petition, and trial court relied on such testimony in rendering its decision, question of whether facts, as stated in petition, were hearsay and should not have been admitted was not before Court of Appeals on appeal from support order. Saunders v. Saunders (App.1983) 650 S.W.2d 534.

§ 21.37. Support Order.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

HISTORY: (A. 1951, 52nd Leg., p. 645, ch. 377, § 13; Vernon's Ann. Civ. St. art. 2328b-3, § 13; A. 1965, 59th Leg., p. 1566, ch. 679, § 23; Vernon's Ann. Civ. St. art. 2328b-4, § 23.)

Cases

In general.

In suit for enforcement of child support agreement which was made part of divorce judgment rendered in Germany, trial court had jurisdiction to render judgment for future child support. Uhl v. Uhl (Civ.App.1975) 524 S.W.2d 534.

Death of divorced husband who allegedly had not complied with divorce decree which required him to make child support payments did not create right of action that had not existed before death, and wife could not recover against husband's estate for aggregate of sums unpaid as alleged indebtedness. Clay v. Siercovich (Civ.App.1965) 388 S.W.2d 25.

Review.

Since no competent evidence of divorced wife's support ability was introduced, in suit for child support under Uniform Reciprocal Enforcement of Support Act (this chapter), trial court's order requiring former husband to support child could not stand, but in the interests of justice, under Vernon's Ann. Rules Civ. Proc., Rule 434, case would be remanded to trial court so the facts could be determined. Lewallen v. Hardin (Civ.App.1978) 563 S.W.2d 356.

§ 21.38. Transmittal of Orders.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (A. 1951, 52nd. Leg., p. 645, ch. 377, § 14; Vernon's Ann. Civ. St. art. 2328b-3, § 14; A. 1965, 59th Leg., p. 1566, ch. 679, § 24; Vernon's Ann. Civ. St. art. 2328b-4, § 24.)

§ 21.39. Enforcement Power of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) To require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) To require the defendant to make payments at specified intervals to the district clerk or Probation Department of the court;

(3) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court; and

(4) To order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding.

HISTORY: (Am.A. 1975, 64th Leg., p. 1271, ch. 476, § 49 eff. Sept. 1, 1975.)

Cases

In general.

Father has obligation to support his children and amount of that obligation must be established by competent evidence of circumstances of both parents, as well as of child, in proceeding under Uniform Reciprocal Enforcement of Support Act (this chapter). Lewallen v. Hardin (Civ.App.1978) 563 S.W.2d 356.

Where support decree is rendered in State which has enacted Uniform Reciprocal Enforcement of Support Act, that decree cannot be enforced by contempt proceedings in Texas without first complying with procedures set forth in Act. Ex parte McBride (Civ.App.1978) 567 S.W.2d 536.

Petitioner, who was committed to jail under a commitment order finding him guilty of contempt of court by reason of his failure to make payments required by temporary order entered in a divorce suit, was not given proper notice and the commitment order was not supported by the citation served on petitioner, where the temporary order which he was charged with violating required him to pay wife the sum of $350 per month but did not State whether the payment was for child support, temporary alimony or for some other purpose, where the court ordered him to show cause why he should not be held in contempt for failing to make the support payments as ordered, and where, at a hearing held in his absence, he was found in contempt for failing to make "payment as ordered". Ex parte Stanford (Civ.App.1977) 557 S.W.2d 346.

Habeas corpus proceeding attacking commitment pursuant to finding of contempt of court for failure to make child support payments is a collateral attack upon order of contempt, and court treats order as void if evidence offered at hearing conclusively establishes that at time of contempt hearing relator did not have, and had no source from which he might reasonably expect to obtain, the amount in arrears plus any costs and attorney's fee adjudged against him. Ex parte McCrary (Civ.App.1976) 538 S.W.2d 2.

In suit for enforcement of child support agreement which was made part of divorce judgment rendered in Germany, trial court had jurisdiction to render judgment for future child support. Uhl v. Uhl (Civ.App.1975) 524 S.W.2d 534.

Fact that final judgment of divorce was in another State did not prevent divorced mother from bringing her suit under the Uniform Reciprocal Enforcement of Support Act in the initiating State. Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

Where court of responding State provided adequate methods for the taking of depositions and filing of interrogatories in proceeding under Vernon's Ann. Civ. St. art. 2328b-4 (repealed), defendant who did not take any action to obtain testimony of plaintiff

by deposition or interrogatories but merely asked the trial court whether it desired depositions to be taken or whether service of interrogatories should be made was not denied right to cross-examine plaintiff. Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

There was no requirement under Vernon's Ann. Civ. St. art. 2328b-4 (repealed) that the trial court transmit defendants answer to the initiating State. Id.

To enforce against a resident of Texas an obligation of support incurred in another State before a residence in Texas was acquired, which obligation could not, under Texas law, be imposed upon a Texas resident who had not incurred the obligation elsewhere, was not a denial of equal protection of the law. Bjorgo v. Bjorgo (Sup.1966) 402 S.W.2d 143.

Father who was a resident of Texas and who was required to support his illegitimate child when a judgment rendered under Kentucky Bastardy Act was enforced by Texas court under Enforcement of Support Act was not denied equal protection although such an obligation was not imposed under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2328b-3 on residents who had not incurred the obligation in another State. Id.

Having entered an order under Vernon's Ann. Civ. St. art. 2328b-4 (repealed), against a local resident to enforce a support order of an out-of-State court, the Texas court could enforce that order, through contempt proceedings if necessary, on its own motion and without a new complaint being filed by the initiating State. Op.Atty.Gen. 1966, No. C-634.

§ 25 of Vernon's Ann. Civ. St. art. 2328b-4 (repealed) authorized a court acting as respondent court to punish contempts as in other child support cases. Ex parte Winfree, 153 Tex. 12, 263 S.W.2d 154 (1953), authorized the court to acquire jurisdiction in contempt proceedings in child support cases on the basis of a rule nisi or show cause order, without an additional complaint. Op.Atty.Gen. 1966, No. C-733.

Periodical child support payments which divorced husband is ordered to make do not constitute a "debt" and are enforceable only by contempt in the divorce proceeding. Clay v. Siercovich (Civ.App.1965) 388 S.W.2d 25.

The only remedy for enforcing a child support order lies in a civil contempt proceeding. Freeland v. Freeland (Civ.App.1958) 313 S.W.2d 943.

A district court has jurisdiction and power to punish for contempt one who fails to pay child support ordered by the court of another State. Padfield v. McIntosh (Civ.App.1954) 267 S.W.2d 224, error dismissed.

Judgment of Texas Court in ancillary enforcement proceedings under Uniform Reciprocal Enforcement of Support Act of Arkansas and Texas, requiring divorced father of minor children to pay $20 per week for their support, did not bar subsequent action in Texas to recover on Arkansas judgment against father for specified amount found to be due and unpaid under Arkansas divorce judgment requiring weekly payments for support of children. Stubblefield v. Stubblefield (Civ.App.1954) 272 S.W.2d 633.

Comity and public policy require that remedy of contempt be available in courts of Texas to require father to make payments which he has been ordered by court of sister State to make for support of minor child, where such father has subsequently become resident of Texas. Guercia v. Guercia (1951) 150 T. 418, 241 S.W.2d 297.

Parties.

Where wife's petition for support listed herself and her daughter as dependants but it was signed only by wife in New York and when petition was filed in Texas it showed on its face that daughter was no longer a minor and it did not contain sufficient allegations to show that daughter was likely to become a public charge, daughter was not a party to the suit in the trial court and was not a party to appeal taken by wife, who furnished appeal bond reflecting that only she was appealing, and appeal was subject to dismissal when wife made no complaint of judgment insofar as it dismissed the cause of action which she had asserted for her own support. Kaplan v. Kaplan (Civ.App.1963) 373 S.W.2d 271.

Jury trial.

A respondent was not entitled to a jury in connection with contempt proceedings brought under Vernon's Ann. Civ. St. art. 2328b-4 (repealed). Op.Atty.Gen. 1974, No. H-218.

A jury is available to a respondent in non-contempt Uniform Reciprocal Enforcement of Support when this proceeding is before the court. Op.Atty.Gen. 1974, No. H-270.

Evidence.

Even if certificate of dissolution was included in Kentucky divorce decree, the Texas Department of Human Resources, which brought proceeding under Uniform Reciprocal Enforcement of Support Act (this chapter) for confirmation of support provisions, failed to prove arrearages and failed to prove its status as assignee of wife's child support rights as there was no introduction of any verified pleadings or any introduction of evidence on which any of the requisite elements could have supported the confirmation order. Byrd v. Texas Dept. of Human Resources (App.1981) 625 S.W.2d 375.

Statements made in affidavits accompanying certificate forwarded in suit under Uniform Reciprocal Enforcement of Support Act could not be considered sufficient evidentiary basis for support order. Lewallen v. Hardin (Civ.App.1978) 563 S.W.2d 356.

Evidence that Georgia court which granted divorce had ordered husband to pay $20 per week for child support was insufficient to support award, made in proceeding under the Uniform Reciprocal Enforcement of Support Act (this chapter), of $160 per month. Holmes v. Tibbs (Civ.App.1976) 542 S.W.2d 487.

Trial court in responding State in Uniform Reciprocal Enforcement of Support Act proceeding should not consider as evidence the statements made in the certificate and other material received from the initiating court. Id.

In action under Wisconsin Uniform Reciprocal Enforcement of Support Act (W.S.A. 52.10) to recover child support for parties' alleged minor children, evidence failed to establish that defendant had cohabited with plaintiff during the years the children were born and thus there was no evidence of a vital fact necessary to establish parenthood, despite defendant's admission of cohabitation. Guerra v. DeLuna (Civ.App.1975) 526 S.W.2d 225.

In suit by former wife brought under the Uniform Reciprocal Support Act (this chapter) evidence supported award of $1,000 per month for child support. Strader v. Strader (Civ.App.1974) 517 S.W.2d 905.

In reciprocal enforcement of support proceeding, record showing that at no time during hearing court or attorney elicited any evidence as to father's present employment status or earnings or other matters pertinent to his present ability to pay child support and that only statement concerning financial condition of father was allegation made by mother by way of her petition in initiating court to effect that he was employed by trucking company did not support trial court's finding that father's present conditions warranted judgment requiring him to pay sum of $250 per month for child support. Beck v. Winegeart (Civ.App.1971) 471 S.W.2d 422.

Where suit was initiated under Uniform Support of Dependents Law of Iowa for order directing Texas resident to support six minor children, court of domestic relations of Harris County could not properly consider statements made in certificate and other material received from initiating court in Iowa as evidence and, in absence of any evidence, judgment should not have been awarded for plaintiff. Way v. Fisher (Civ.App.1968) 425 S.W.2d 704.

In proceeding by divorced mother under Uniform Reciprocal Enforcement of Support Act, divorced father offering no evidence of nonaccess failed to prove that child was not his. Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

Evidence warranted order requiring father to support minor child of annulled marriage, in view of mother's testimony as to Mexican marriage, its annulment, and father's letters acknowledging paternity. Benson v. Benson (Civ.App.1966) 400 S.W.2d 340, ref. n.r.e.

Purported foreign divorce judgment which was not certified or authenticated and which bore no signature whatever was of no probative force in proceeding under Uniform Reciprocal Enforcement of Support Act. Neff v. Johnson (Civ.App.1965) 391 S.W.2d 760.

Birth certificate was admissible to establish age of child for whom support was sought in proceeding under Uniform Reciprocal Enforcement of Support Act. Id.

In original habeas corpus proceeding to challenge validity of contempt judgment which ordered relator confined in jail, trial court's express finding that relator had had actual knowledge of support order or its implied finding that relator was able to make support payments and to pay arrearages were sustained by evidence. Ex parte Helma (1953) 259 S.W.2d 184.

Contempt judgment.

Order committing petitioner to jail for his failure to make child support payments and house payments required by temporary order entered in divorce suit was not void merely because he was not present at the contempt trial. Ex parte Stanford (Civ.App.1977) 557 S.W.2d 346.

Since habeas corpus proceeding challenging judgment finding petitioner in contempt for violation of Louisiana child support order constituted a collateral attack on the judgment of a court of competent jurisdiction, in order for relator to prevail he was required to show that the contempt judgment was absolutely void and not merely voidable. Ex parte Gaston (Civ.App.1973) 501 S.W.2d 447.

Order finding divorced husband in contempt could not be sustained on basis of violation of order requiring that he not be intoxicated during visits with child,

where violation of such order was not recited in order of contempt. Ex parte Davis (Civ.App.1970) 450 S.W.2d 97.

Contempt order must clearly State in what respects prior order has been violated. Id.

Texas contempt judgment, which ordered relator confined in jail until he paid $50 fine, $500 attorney's fee taxed as costs, and $5,850 due in unpaid support installments ordered by California court for benefit of relator's two children, was not void because of failure to prove that California had adopted the Uniform Reciprocal Enforcement of Support Act. Ex parte Helms (1953) 259 S.W.2d 184.

Full faith and credit, judgment.

Kentucky child support judgment was entitled to be given full faith and credit by Texas courts only to the extent that it adjudicated paternity of father and imposed a duty of support where mother who brought the action failed to show that the unaccrued support payments were not subject to modification by Kentucky courts. Bjorgo v. Bjorgo (Sup.1966) 402 S.W.2d 143.

District Court was authorized to make an independent adjudication of the amount and frequency of child support payments to be made by Texas father under §§ 13 and 15 of Vernon's Ann. Civ. St. art. 2328b-3 (repealed) where paternity and duty of support were established by Kentucky judgment which was entitled to full faith and credit as to those points. Id.

Res judicata, judgment.

Judgment of Nevada court against former husband for $11,605 unpaid child support through May, 1973, was res judicata of such amount through May, 1973, in former wife's subsequent action in Texas for support brought under Uniform Reciprocal Support Act (this chapter). Strader v. Strader (Civ.App.1974) 517 S.W.2d 905.

Where paternity of child was adjudicated in divorce proceeding by court of another State, it was res adjudicata in suit for support of child under Uniform Reciprocal Enforcement of Support Act. Schlang v. Schlang (Civ.App.1967) 415 S.W.2d 28, ref. n.r.e.

Where wife had improperly perfected an appeal alone and she had not complained of judgment insofar as it dismissed the cause of action which she had asserted for her own support but had appealed only as to that part of petition seeking support for daughter, a judgment should have been entered that wife take nothing and it was improper to sustain husband's plea of res judicata. Kaplan v. Kaplan (Civ.App.1963) 373 S.W.2d 271.

Review.

Since no competent evidence of divorced wife's support ability was introduced, in suit for child support under Uniform Reciprocal Enforcement of Support Act (this chapter), trial court's order requiring former husband to support child could not stand, but in the interests of justice, under Vernon's Ann. Rules Civ. Proc., Rule 434, case would be remanded to trial court so that facts might be further developed. Lewallen v. Hardin (Civ.App.1978) 563 S.W.2d 356.

In former wife's suit under Uniform Reciprocal Support Act (this chapter) for child support, court was authorized to make award of $1,000 per month for child support and award was not abuse of discretion. Strader v. Strader (Civ.App.1974) 517 S.W.2d 905.

Where at time of divorce husband was receiving salary of about $700 per month from Air Force but at time of filing of contempt charges on behalf of divorced wife and her children, husband apparently had severed his connection with Air Force and had little or no income and was in State hospital after having been judged insane, motion to reduce child support payments should not have been overruled. Taylor v. Nagle (Civ.App.1967) 412 S.W.2d 812.

Where points raised on second appeal in child support case were very same points presented by appellant in first appeal, and they had all been overruled for reasons stated in opinion on first appeal, reviewing court would overrule those points in second appeal for same reasons. Benson v. Benson (Civ.App.1966) 400 S.W.2d 340.

§ 21.40. Receipt and Disbursement of Payments; Responding State.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the district clerk or Probation Department of the court:

(1) On the receipt of payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) On request, to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (A. 1951, 52nd Leg., p. 646, ch. 377, § 16; Vernon's Ann. Civ. St. art. 2328b-3, § 16; A. 1965, 59th Leg., p. 1566, ch. 679, § 26; Vernon's Ann. Civ. St. art. 2328b-4, § 26.)

§ 21.41. Receipt and Disbursement of Payments; Initiating State.

The court of this State, when acting as an initiating State, shall have the duty which may be carried out through the district clerk or Probation Department of the court to receive and disburse forthwith all payments made by the defendent or transmitted by the court of the responding State.

HISTORY: (A. 1951, 52nd Leg., p. 646, ch. 377, § 17; Vernon's Ann. Civ. St. art. 2328b-3, § 17; A. 1965, 59th Leg., p. 1566, ch. 679, § 27; Vernon's Ann. Civ. St. art. 2328b-4, § 27.)

Cases

Order committing former husband to county jail until $1,000 of amended arrearage in child support payments, together with court costs and attorney fees, had been paid was void where there was no order directing former husband to pay amended arrearage, but merely a recitation of the parties' agreement as to the schedule of payments of arrearages. Ex parte Franklin, 683 S.W.2d 33 (Tex.App.12 Dist.1984).

Former husband could not be confined for the contempt adjudged in 1982 order modifying divorce decree, establishing amount of child support arrearages, and reciting agreement of parties for schedule of payment since, under that order, court's decision to assess punishment depended upon character of former husband's conduct subsequent thereto. Id.

§ 21.42. Stay of Proceedings.

No proceeding under this chapter shall be stayed because of the existence of a pending suit for divorce, separation, annulment, dissolution, habeas corpus, custody proceeding, or suit affecting the parent-child relationship.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 28; Vernon's Ann. Civ. St. art. 2328b-4, § 28.)

Cases

In general.

Broad purposes and remedial nature of Uniform Reciprocal Enforcement of Support Act contemplate pendency of one action filed in county of obligor's residence along with another action subsequently filed in different jurisdiction and transferred pursuant to said Act. Raney v. Raney (Civ.App.1976) 536 S.W.2d 617.

Pendency of action brought by wife in State court against husband for divorce, division of property, and custody and support of children, did not require dismissal of child support action subsequently brought by wife in out-of-State court, which action was transferred to court within State. Id.

§ 21.43. Application of Payments.

No order of support issued by a court of this State when acting as a responding State shall supersede any other order of support, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 29; Vernon's Ann. Civ. St. art. 2328b-4, § 29.)

Cases

In general.

Relief from confinement in jail for contempt of court for failure to make child support payments in accordance with a Florida divorce decree was not available to petitioner where order of Texas court did not modify his obligation under divorce decree as claimed. Hassig v. Smith (Fla.App.1981) 395 So.2d 188.

§ 21.44. Participation in Proceeding.

Participation in any proceedings under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 30; Vernon's Ann. Civ. St. art. 2328b-4, § 30.)

Cases

In general.

Where wife's petition to enforce Georgia child support order, to which she attached a copy of support decree, based her right to relief upon § 21.65 and prayed that Georgia decree be registered and confirmed, her claim was within registration sections of the Uniform Reciprocal Enforcement of Support Act (§§ 21.61 to 21.66) thus, trial court lacked authority to entertain former husband's motion to modify the support order. O'Halloran v. O'Halloran (Civ.App.1979) 580 S.W.2d 870.

The first Texas court entertaining a suit under the Uniform Reciprocal Enforcement of Support Act (this chapter) has continuing and exclusive jurisdiction so that an order of contempt and commitment of relator by a second Texas court was void. In re Miller (Civ.App.1979) 583 S.W.2d 872.

§ 21.45. Interdistrict Application.

(a) This chapter is applicable when both the plaintiff and the defendant are in this State but in different judicial districts.

(b) If the initiating court finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that another court in this State may obtain jurisdiction of the defendant or his property, the clerk of the court shall send three copies of the petition and a certification of the findings to the court of the judicial district in which the defendant or his property is found. The clerk of the court receiving these copies shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the State as a responding State.

(c) In a suit under this section, no defense may be raised other than payment and satisfaction of the support obligation or invalidity of the decree or judgment creating the obligation.

HISTORY: (Am.A. 1981, 67th Leg., p. 947, ch. 356, § 13, eff. Aug. 31, 1981; A. 1981, 67th Leg., p. 2272, ch. 551, § 12, eff. Aug. 31, 1981.)

Cases

In general.

Vernon's Ann. Civ. St. art. 2328b-4 (repealed) was applicable where the defendant moved to a new State, where both parties moved to new and different States, where one or both parties moved from other States to this State, and where resident Texas parties remained in this State and located in different jurisdictions. Westphal v. Palmer (Civ.App.1972) 480 S.W.2d 277.

Subchapter D. Registration of Foreign Support Orders

§ 21.61. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided by this subchapter.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 32; Vernon's Ann. Civ. St. art. 2328b-4, § 32.)

Cases

Purpose.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

§ 21.62. Registration.

The obligee may register foreign order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 33; Vernon's Ann. Civ. St. art. 2328b-4, § 33.)

Cases

Construction and application.

Although Uniform Reciprocal Enforcement of Support Act (this chapter) does not apply to the payment of alimony, it does not follow that a foreign judgment cannot be registered under the Act because it contains provisions for both child support and alimony, as when confirmed, the support portion of the judgment has the same effect as if originally entered in a Texas court and the alimony portion is not affected and remains a valid judgment in the rendering State subject to enforcement as provided by law. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

Purpose.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

§ 21.63. Registry of Foreign Support Orders.

The clerk of the court shall maintain a registry of foreign support orders in which he shall record foreign support orders.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 34; Vernon's Ann. Civ. St. art. 2328b-4, § 34.)

§ 21.64. Petition for Registration.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

HISTORY: (A. 1965, 59th Leg., p. 1567, ch. 679, § 35; Vernon's Ann. Civ. St. art. 2328b-4, § 35.)

Cases

In general.

Where wife's petition for registration of Georgia decree of child support was accompanied by her affidavit based on "the best of her information, knowledge and belief" and husband filed no special exceptions and did not make objection before trial court orally rendered judgment and petitioner had moved for entry of judgment, the husband had waived any defect in the petition by failing to bring it to the attention of the trial court prior to rendition of judgment. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

Purpose.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

§ 21.65. Jurisdiction and Procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

HISTORY: (A. 1965, 59th Leg., p. 1568, ch. 679, § 36; Vernon's Ann. Civ. St. art. 2328b-4, § 36.)

Cases

In general.

County court had jurisdiction to hear action to collect arrearages in support, though amount in controversy exceeded $10,000, jurisdictional limit in actions for debt, under Vernon's Ann. Civ. St. art. 1970-360, § 3(b), granting county court additional jurisdiction to hear causes and matters under Uniform Reciprocal Enforcement of Support Act (this chapter). Byrd v. Texas Dept. of Human Resources, 673 S.W.2d 640 (Tex.App.4Dist.1984).

Trial court had jurisdiction to hear action for back child support under Uniform Reciprocal Enforcement of Support Act (this chapter) though children who were the

object of the order were no longer minors when the judgment registering and confirming the foreign support was rendered. Id.

Where divorced mother resided in California and divorced father, though citizen of New Jersey, was temporarily residing in Texas, mother's right to invoke jurisdiction of Texas court to order increased support payments, if she had such right, was dependent upon Vernon's Ann. Civ. St. art. 2328b-4 (repealed) and not upon act creating juvenile court of Dallas County (§ 3 of Vernon's Ann. Civ. St. art. 2338-9). Pelej v. Winans (Sup.1967) 422 S.W.2d 152.

If order requiring divorced husband to pay child support is not complied with, wife cannot maintain action in any other court than that wherein divorce is granted to enforce payment ordered, and execution and garnishment are not authorized. Clay v. Siercovich (Civ.App.1965) 388 S.W.2d 25.

Where wife, after securing divorce decree and child support order from 17th District Court, Tarrant County, Texas, moved to Indiana while husband continued to reside in Texas, and thereafter wife secured child support order in Indiana court, District Court of Dallas County, Texas, where husband was allegedly residing did not have jurisdiction under Vernon's Ann. Civ. St. repealed arts. 2328b-1 to 2358b-3, to enter judgment ordering husband to pay child support order in accordance with the Indiana support order in view of fact that there was a prior judgment by another District Court of Texas which involved the same parties and adjudicated the same matter. Freeland v. Freeland (Civ.App.1958) 313 S.W.2d 943.

Support order.

Although obligor in action brought under Uniform Reciprocal Enforcement of Support Act (this chapter) to confirm Kentucky child support decree did not except specifically to introduction of the purported Kentucky judgment, such 0udgment was not entitled to confirmation as it was incompetent evidence in that it was unverified, uncertified and unauthenticated and although trial court order that copy of certificate of dissolution be forwarded, such action could not cure the fatal defect where original order confirming the purported 1965 decree was signed in 1980 but certificate of circuit court clerk in Kentucky was not introduced into the record at that time. Byrd v. Texas Dept. of Human Resources (App.1981) 625 S.W.2d 375.

As only defenses available in an action for registration and confirmation of foreign decree of support are those available to a defendant in action on a foreign judgment, husband could not challenge child support provision of Georgia divorce decree on ground that parties had orally agreed that the children would be sent to private schools and such agreement was part of a consideration for agreed child support. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

As in a full faith and credit inquiry, the only defenses which may be interposed in a hearing to register and confirm a foreign decree of support are those which relate to the validity of the foreign decree, such as lack of jurisdiction or existence of procedural defects which render the judgment void. Id.

Only defenses which may be interposed in proceeding to register foreign child support order, pursuant to Uniform Reciprocal and Enforcement of Support Act (this chapter) are those which relate to validity of original order, such as lack of jurisdiction or procedural defect which would render that judgment void. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

Since alimony arrearages awarded under Georgia divorce decree were vested and absolute in Georgia they were entitled to full faith and credit in Texas. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

Although Uniform Reciprocal Enforcement of Support Act (this chapter) does not apply to the payment of alimony, it does not follow that a foreign judgment cannot be registered under the Act because it contains provisions for both child support and alimony, as when confirmed, the support portion of the judgment has the same effect as if originally entered in a Texas court and the alimony portion is not affected and remains a valid judgment in the rendering State subject to enforcement as provided by law. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

In a registration proceeding under Uniform Reciprocal Enforcement of Support Act (this chapter), the only defenses which may be interposed are those which relate to validity of original decree, such as lack of jurisdiction or existence of procedural defects which render the judgment void; defenses based upon a claim that the judgment was erroneous or that, according to law of the forum, the judgment would not have been rendered in the first instance, are not permitted. O'Halloran v. O'Halloran (Civ.App.1979) 580 S.W.2d 870.

Where wife's petition to enforce Georgia child support order, to which she attached a copy of support decree, based her right to relief upon this section and prayed that Georgia decree be registered and confirmed, her claim was within registration sections of the Uniform Reciprocal Enforcement of Support Act (§§ 21.61 to 21.66) thus, trial court lacked authority to entertain former husband's motion to modify the support order. O'Halloran v. O'Halloran (Civ.App.1979) 580 S.W.2d 870.

Alabama divorce decree confirming an agreement as to child support was a child "support order" within meaning of §§ 34 to 37 of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), though not specifically setting forth the child support payments to be made, and petition seeking only collection of child support under such decree was within the jurisdiction of the juvenile court, where petition was verified and in conformity with requirements of said sections, as to registration of foreign support orders; petition did not constitute only suit for debt without the jurisdiction of the juvenile court. Morway v. Morway (Civ.App.1970) 460 S.W.2d 531.

Decree of Louisiana court fixing support for divorced wife's children was a child "support order" within purview of §§ 34 to 37 of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), conferring jurisdiction on Galveston County domestic relations court to confirm and enforce foreign support order. Adams v. Adams (Civ.App.1969) 441 S.W.2d 917.

§ 21.66. Effect and Enforcement of Support Order.

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the defendant for contempt for

failure to comply with orders for payment of alimony, maintenance, or support entered in this State, to enter an order for income withholding as provided by § 14.43 of this Code, and all other remedies provided by ch. 14 of this Code.

HISTORY: (A. 1965, 59th Leg., p. 1568, ch. 679, § 37. Vernon's Ann. Civ. St. art. 2328b-4, § 37; am.A. 1985, 69th Leg., p. 1986, ch. 232, § 12, eff. Sept. 1, 1985.)

Cases

In general.

Texas public policy does not bar enforcement of accrued alimony under a foreign judgment. Parker v. Parker (Civ.App.1980) 593 S.W.2d 857.

Where foreign support order was entered prior to child's eighteenth birthday, court had jurisdiction to register and confirm the order in accordance with Uniform Reciprocal and Enforcement of Support Act (this chapter) even though child was over 18 years of age at time action was brought to register foreign support order. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

Purpose of Uniform Reciprocal Enforcement of Support Act (this chapter) is to make a foreign support order, registered and confirmed in State, effective as of date order was entered in foreign State. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

Only defenses which may be interposed in proceeding to register foreign child support order, pursuant to Uniform Reciprocal and Enforcement of Support Act (this chapter) are those which relate to validity of original order, such as lack of jurisdiction or procedural defect which would render that judgment void. Ackerman v. Yanoscik (Civ.App.1980) 601 S.W.2d 72.

§§ 34 to 37 of Vernon's Ann. Civ. St. art. 2328b-4 (repealed), which dealt with registration and enforcement of support orders rendered by the courts of another State, did not apply to efforts to enforce payment of alimony. Adams v. Adams (Civ.App.1969) 441 S.W.2d 917.

UTAH
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UTAH

UTAH CODE ANN. §§ 77-31-1 to 77-31-39

§ 77-31-1. Purposes.

The purposes of this Act are to improve and extend by reciprocal legislation and enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (C. 1953, 77-31-1, enact.L. 1980, ch. 15, § 2.)

§ 77-31-2. Definitions.

As used in this Act:

(1) "STATE" includes any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign jurisdiction in which this or a substantially similar reciprocal law or procedure is in effect.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the District Court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statutory law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means person to whom a duty of support is owed and a State or political subdivision thereof.

(9) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any territory covered by the provisions of this Act.

(10) "SUPPORT ORDER" means any judgment, decree or order of support, whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered.

(11) "RENDERING STATE" means any State in which a support order is originally entered.

(12) "REGISTERING COURT" means any District Court of this State in which the support order of the rendering State is registered.

(13) "REGISTER" means to file in the Registry of Foreign Support Orders.

(14) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

(15) "DEPARTMENT" means the Utah State Department of Social Services.

(16) "TITLE IV-D AGENCY" means the single and separate agency designated to enforce child support under an approved State plan pursuant to Title IV-D of the Social Security Act and authorized to reimburse costs and pay incentive under that title.

HISTORY: (C. 1953, 77-31-2, enact.L. 1980, ch. 15, § 2; L. 1981, ch. 66, § 1.)

§ 77-31-3. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (C. 1953, 77-31-3, enact.L. 1980, ch. 15, § 2.)

§ 77-31-4. Extent of Duties of Support.

Duties of support arising under the law of this State when applicable under § 77-31-7 bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (C. 1953, 77-31-4, enact.L. 1980, ch. 15, § 2.)

§ 77-31-5. Interstate Rendition.

The Governor of this State (1) may demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (C. 1953, 77-31-5, enact.L. 1980, ch. 15, § 2.)

§ 77-31-6. Conditions of Interstate Rendition.

(1) Before making the demand on the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any county attorney of this State to

satisfy him that at least sixty days prior thereto the obligee brought an action for the support under this Act, or that the bringing of an action would be of no avail.

(2) When under this or a substantially similar act, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon any county attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this Act or would be effective.

(3) If an action for the support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(4) If an action for support has been brought and the person demanded has prevailed in that action, the Governor may decline to honor the demand.

(5) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor may decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (C. 1953, 77-31-6, enact.L. 1980, ch. 15, § 2.)

§ 77-31-7. Choice of Law.

Duties of support applicable under this Act are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (C. 1953, 77-31-7, enact.L. 1980, ch. 15, § 2.)

Cases

Law of forum State applies.

By virtue of former section it was correct for trial court to determine the existence and extent of Utah resident's duty of support under the laws of Utah, rather than Texas, where the divorce decree was entered. Lamberth v. Lamberth (1976) 550 P.2d 200.

§ 77-31-8. Remedies of State or Political Division Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, or whenever an individual not receiving support from the State or a political subdivision makes an application for child support collection or paternity determination services and pays an application fee, the State or political subdivision has the same right to invoke the provisions hereof as the obligee for the purposes of securing reimbursement of support expenditures, collecting child support, and establishing paternity.

HISTORY: (C. 1953, 77-31-8, enact.L. 1980, ch. 15, § 2.)

§ 77-31-9. How Duties of Support Enforced.

All duties of support, including arrearages, and arrearages reimbursable to the State or a political subdivision thereof are enforceable by action irrespective of the relationship between the obligor and the obligee. Actions authorized under this Act include establishment of paternity, wage assignments, garnishment, liens, execution of liens, contempt proceedings and any other collection or enforcement procedure.

HISTORY: (C. 1953, 77-31-9, enact.L. 1980, ch. 15, § 2.)

§ 77-31-10. Jurisdiction.

Jurisdiction of all proceedings hereunder is vested in the District Court.

HISTORY: (C. 1953, 77-31-10, enact.L. 1980, ch. 15, § 2.)

§ 77-31-11. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and his dependents for whom support is sought, and all other pertinent information. The petitioner may include in, or attach to, the petition any information which may help in locating or identifying the respondent, such as a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (C. 1953, 77-31-11, enact.L. 1980, ch. 15, § 2.)

§ 77-31-12. County Attorney to Represent Petitioner.

The county attorney, upon the request of the court or the director of the Department of Social Services or his appointed representative, shall represent the petitioner in the initiation of any proceedings under this Act.

HISTORY: (C. 1953, 77-31-12, enact.L. 1980, ch. 15, § 2.)

§ 77-31-13. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (C. 1953, 77-31-13, enact.L. 1980, ch. 15, § 2.)

§ 77-31-14. Duty of Court of This State as Initiating State.

If the court of this State, acting as an initiating State, finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and may cause three copies of (1) the petition (2) its

certificate and (3) this Act to be transmitted to the court and Title IV-D agency in the responding State. If the name and address of such court is unknown or if the IV-D agencies in the initiating State and responding State have so agreed, it shall cause such copies to be transmitted to the Title IV-D agency of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (C. 1953, 77-31-14, enact.L. 1980, ch. 15, § 2.)

§ 77-31-15. Costs and Fees.

There shall be no filing fee or other costs taxable to the obligee, but a court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent or either, be paid by the obligor.

HISTORY: (C. 1953, 77-31-15, enact.L. 1980, ch. 15, § 2.)

§ 77-31-16. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction it may (1) as an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or (2) as a responding State, obtain the body of the respondent by appropriate process.

HISTORY: (C. 1953, 77-31-16, enact.L. 1980, ch. 15, § 2.)

§ 77-31-17. State Information Agency.

The department is hereby designated as the State Information Agency under this Act, and it shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar act; and

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this Act.

HISTORY: (C. 1953, 77-31-17, enact.L. 1980, ch. 15, § 2.)

§ 77-31-18. Duty of Court and County Attorney of this State as Responding State.

(1) After the court of this State acting as a responding State has received from the court of the initiating State the aforesaid copies, the clerk of the court shall docket the case and notify the county attorney of his action.

(2) It shall be the duty of the county attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the respondent or his property and shall request the court to set a time and place for a hearing.

HISTORY: (C. 1953, 77-31-18, enact.L. 1980, ch. 15, § 2.)

§ 77-31-19. Further Duties of Court and County Attorney of this State in the Responding State.

(1) The county attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the county attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(2) If the respondent or his property is not found in the county and the county attorney discovers by any means that the respondent or his property may be found in another county of this State or in another State, he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that it forward the documents to the proper court. Thereupon both the court of the other county as any court of this State receiving the documents and the county attorney have the same powers and duties under this Act as if the documents had been originally addressed to them. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(3) If the county attorney has no information as to the whereabouts of the obligor or his property, he shall so inform the initiating court.

HISTORY: (C. 1953, 77-31-19, enact.L. 1980, ch. 15, § 2.)

§ 77-31-20. Procedure.

The court shall conduct proceedings under this Act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

HISTORY: (C. 1953, 77-31-20, enact.L. 1980, ch. 15, § 2.)

§ 77-31-21. Petitioner Absent from Responding State; Continuance.

If the petitioner is absent from the responding State and the respondent presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (C. 1953, 77-31-21, enact.L. 1980, ch. 15, § 2.)

§ 77-31-22. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (C. 1953, 77-31-22, enact.L. 1980, ch. 15, § 2.)

§ 77-31-23. Rules of Evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the District Court.

HISTORY: (C. 1953, 77-31-23, enact.L. 1980, ch. 15, § 2.)

§ 77-31-24. Order of Support.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. The court and county attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the county attorney shall transmit a certified copy of the order to the county attorney of any county where it appears that procedures to enforce payment of the amount due would be effective. The county attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (C. 1953, 77-31-24, enact.L. 1980, ch. 15, § 2.)

§ 77-31-25. Court of this State as Responding State To Transmit Copies to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (C. 1953, 77-31-25, enact.L. 1980, ch. 15, § 2.)

§ 77-31-26. Additional Powers of Court of this State as Responding State.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its order and in particular:

(1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent.

(2) To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary.

(3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (C. 1953, 77-31-26, enact.L. 1980, ch. 15, § 2.)

§ 77-31-27. Additional Duties of Court of This State as Responding State.

The courts of this State, when acting as a responding State, shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the department if the obligee is receiving child support enforcement services under Title IV-D of the Social Security Act or otherwise to the court of the initiating State; and

(2) Upon request, to furnish to the department or the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (C. 1953, 77-31-27, enact.L. 1980, ch. 15, § 2.)

§ 77-31-28. Duty of Department Acting as Initiating State To Receive and Disburse Payments.

The department, when acting as an initiating State, shall have the duty to receive and disburse forthwith all payments make by the respondent or transmitted by the court or the Title IV-D agency of the responding State, if the obligee is receiving child support enforcement services under Title IV-D of the Social Security Act. If not, the court shall assume this duty which may be carried out through the clerk of the court.

HISTORY: (C. 1953, 77-31-28, enact.L. 1980, ch. 15, § 2.)

§ 77-31-29. Proceedings Not To Be Stayed.

No proceeding under this Act shall be stayed because of the existence of a pending action for divorce, separation, annulment, dissolution or custody proceeding.

HISTORY: (C. 1953, 77-31-29, enact.L. 1980, ch. 15, § 2.)

Cases

Divorced wife living in California was not required to seek modification of Utah divorce decree that did not include provision for payment of alimony or support before initiating proceedings to compel support; statute created an exception to general rule that second case involving same parties and subject matter as a prior case will be stayed, thus trial court should have determined alimony and support issue upon forwarding of petition by California court. Maskil v. Green (1971) 25 U.2d 187, 479 P.2d 343.

§ 77-31-30. Application of Payments.

No order of support issued by a court of this State when acting as a responding State shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (C. 1953, 77-31-30, enact.L. 1980, ch. 15, § 2.)

Cases

Conflicting support orders.

Utah court's order that defendant pay $200 per month child support was neither modified, vacated, reformed, nor eliminated by subsequent order of Washington court that defendant pay $160 per month; and he owed difference upon his return to Utah. Oglesby v. Oglesby (1973) 29 U.2d 419, 510 P.2d 1106.

§ 77-31-31. Effect of Participation in Proceeding.

Participation in any proceedings under this Act shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (C. 1953, 77-31-31, enact.L. 1980, ch. 15, § 2.)

§ 77-31-32. Foreign Support Orders; Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 77-31-33 to 77-31-37.

HISTORY: (C. 1953, 77-31-32, enact.L. 1980, ch. 15, § 2.)

§ 77-31-33. Registration of Foreign Support Orders.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (C. 1953, 77-31-33, enact.L. 1980, ch. 15, § 2.)

§ 77-31-34. Registry of Foreign Support Orders Maintained by Clerk.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall record foreign support orders.

HISTORY: (C. 1953, 77-31-34, enact.L. 1980, ch. 15, § 2.)

§ 77-31-35. Petition for Registration of Foreign Support Order.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

HISTORY: (C. 1953, 77-31-35, enact.L. 1980, ch. 15, § 2.)

§ 77-31-36. Jurisdiction and Procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

HISTORY: (C. 1953, 77-31-36, enact.L. 1980, ch. 15, § 2.)

§ 77-31-37. Effect of Registration; Enforcement Procedure.

The support orders as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of other orders for payment of alimony, maintenance or support entered in this State.

HISTORY: (C. 1953, 77-31-37, enact.L. 1980, ch. 15, § 2.)

§ 77-31-38. Uniformity of Interpretation.

This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (C. 1953, 77-31-38, enact.L. 1980, ch. 15, § 2.)

§ 77-31-39. Citation; Uniform Reciprocal Enforcement of Support Act.

This Act may be cited as the Uniform Reciprocal Enforcement of Support Act.

HISTORY: (C. 1953, 77-31-39, enact.L. 1980, ch. 15, § 2.)

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Subchapter 1: General Provisions

§ 385. Purposes.

The purposes of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

Construction.

This chapter and its predecessors are remedial in nature and are to be construed liberally with reference to the object to be obtained, and every endeavor should be made by the courts to render them operable. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

Enforcement of existing orders.

In proceedings for enforcement of support under this chapter, a responding court is not required to conform its order, without modification, to the prior order of the court which granted the divorce and required payment of child support; the court may alter the manner payment to reflect the financial inability of a defendant to comply with the terms of the original order. McEvily v. McEvily, 437 A.2d 1110 (Vt., 1981).

Where the defendant's inability to pay child support is the issue in a proceeding under this chapter, the trial court may reduce support payments to reflect changed conditions and the actual ability of the defendant to pay. Wood v. Clement, 437 A.2d 1112 (Vt., 1981).

§ 386. Definitions.

For the purposes of this chapter unless the context otherwise clearly requires:

(1) "COURT" means the District Court or a district judge of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(4) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(5) "LAW" includes both common and statutory law.

(6) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "REGISTER" means to file in the Registry of Foreign Support Orders.

(10) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(11) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(13) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 387. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.§ 388.)

§ 388. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 395 of this title, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1969, No. 191 (Adj. Sess.), § 1, eff. July 1, 1970.)

Cases

Ability to pay.

A parent's duty to support his child is conditioned on ability to pay. Bancroft v. Ackerman, 421 A.2d 1279 (Vt., 1980).

Burden of proof.

Plaintiff making a child support claim under Uniform Revised Enforcement of Support Act, as adopted in Vermont, had burden of showing defendant was under a duty to pay support and had the pecuniary or physical ability to meet the support payments sought. Bancroft v. Ackerman, 421 A. 2d 1279 (Vt., 1980).

Mother failed to meet her burden of showing father had pecuniary or physical ability to make $10 per week child support payment, and order for such payment was practically impossible to perform and would be vacated, where father was a part-time janitor, could not find additional employment, and was unable to maintain even himself at a bare subsistence level without incurring relatively substantial debts. Id.

Subchapter 2. Criminal Enforcement

§ 391. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this chapter apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 392. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any State's attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require

any State's attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Subchapter 3. Civil Enforcement

§ 395. Choice of Law.

Duties of support applicable under this chapter are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 396. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision or State agency furnishes support to an individual obligee, it has the same right to initiate a proceeding under this chapter as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support. When a petition is initiated hereunder, notice shall be given to said obligee, and said obligee may enter an appearance as a party in the proceeding.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 397. How Duties of Support Are Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

In general.

Civil enforcement provisions of this chapter create a simple two-State procedure designed to enable one to whom a duty of support is owed to compel the person owing the duty to abide by it when absent from the State of residence of the person to whom the duty is owed without the person to whom the duty is owed having to leave that person's State of residence. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

Cases

In general.

Civil enforcement provisions of this chapter create a simple two-State procedure designed to enable one to whom a duty of support is owed to compel the person owing the duty to abide by it when absent from the State of residence of the person to whom the duty is owed without the person to whom the duty is owed having to leave that person's State of residence. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

Foreign orders.

It is clear from statutory scheme of civil enforcement provisions of this chapter that an order for support made under this chapter can order payment of arrearages due under a foreign support order. Mancini v. Mancini (1978) 136 Vt. 231, 388 A.2d 414.

§ 398. Jurisdiction.

Jurisdiction of any proceeding under this chapter is vested in the District Court.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

Nonresidents.

The proximity of the petitioner to the court which granted a divorce is irrelevant to the question of jurisdiction; when the obligor or obligee crosses the country, the State border, or a county line, the remedies provided by this chapter become available. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

Vermont court did not lack subject matter jurisdiction of claim under this chapter on basis that the original act was occasioned by need for remedy against an obligor who flees to another jurisdiction and avoids the duty to support because the obligee has neither the facilities nor the means to pursue the obligor and sue him in the State to which he has fled, whereas in instant case the obligor remained in the home State and the obligee had moved to neighboring State. Id.

Vermont court did not lack subject matter jurisdiction of claim under this chapter on basis that legislature did not intend it to apply where, as in instant proceeding initiated in Massachusetts court and referred to Vermont court by Massachusetts court, the responding court or another court of that State granted a divorce and provided for support because if so applied this chapter would derogate from the continuing jurisdiction of the court that granted the divorce to annul, vary or modify any order it made concerning care, custody and maintenance of the children during minority. Id.

§ 399. Contents and Filing of Petition for Support; Venue.

(a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on

his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 400. Officials To Represent Obligee.

If this State is acting as an initiating State, the State's attorney upon the request of the court or the Commissioner of Social Welfare shall represent the obligee in any proceeding under this chapter. If the State's attorney neglects or refuses to represent the obligee, the Attorney General may undertake the representation.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 401. Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 402. Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this chapter to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 403. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the

obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the State. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 404. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee, it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 405. State Information Agency.

(a) The Department of Social Welfare is designated as the State Information Agency under this chapter. It shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this chapter and a statement of their effective date to all other State information agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this chapter; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

(c) After the deposit of 3 copies of the petition and certificate and one copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the State's attorney is not prosecuting the case diligently it shall inform the Attorney General who may undertake the representation.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 406. Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition, certificate and act from the initiating court the clerk of the court shall docket the case and notify the State's attorney of his action.

(b) The State's attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the clerk of the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 407. Further Duties of Court and Officials in the Responding State.

(a) The State's attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the State's attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the State's attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this chapter apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(c) If the State's attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1969, No. 191 (Adj.Sess.) § 1, eff. July 1, 1970.)

§ 408. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to the adduced by either party by deposition or by appearing in person before the court.

The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 409. Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 410. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, July 1, 1970.)4

§ 411. Rules of Evidence.

In any hearing for the civil enforcement of this chapter the court is governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to § 415 of this title or to a defendant in an action or a proceeding to enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

Defenses.

Where case initiated in Massachusetts was referred to Vermont District Court under this chapter, the duty of support sought to be enforced was based on divorce order of Vermont Superior Court, the superior court's order was before the District Court and record before Supreme Court on obligor's appeal did not show that obligor raised any of the defenses to the order which are permitted by this chapter, in absence of a defense the order established obligor's duty to support and District Court could not be put in error for so finding. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

§ 412. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbusement therefor and subject the property of the obligor to the order.

Support orders made pursuant to this chapter shall require that payments be made to the clerk of the court of the responding State. The court and State's attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which it appears that proceedings to enforce the order would be effective. The State's attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 413. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 414. Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1969, No. 191 (Adj.Sess), § 1, eff. July 1, 1970.)

§ 415. Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary; the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 416. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 417. Additional Duty of Initiating Court.

An initiating court or the Department of Social Welfare when it is the petitioner shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court. When the Department of Social Welfare is authorized to receive and disburse payments, it shall file with the court an annual report of its receipts and disbursements.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 418. Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this chapter because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the suport demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1969, No. 191 (Adj.Sess), § 1, eff. July 1, 1970.)

Cases

Effect of prior action.

On petition in Massachusetts court for support of petitioner's minor child, referred to Vermont District Court as obligor was in Vermont, for action under this chapter, where Vermont Superior Court had granted divorce and established sum to be paid as child support, District Court was bound by this chapter to conform its order to pay support to sum established by Superior Court. Bushway v. Riendeau (1979) 137 Vt. 455, 407 A.2d 178.

§ 419. Application of Payments.

A support order made by a court of this State pursuant to this chapter does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period

pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1969, No. 191 (Adj.Sess), § 1, eff. July 1, 1970.)

Cases

Enforcement of existing orders.

Cited in Mancini v. Mancini, 465 A.2d 272 (Vt., 1983).

In proceedings for enforcement of support under this chapter, an order of a responding court reducing the support payments required by the order of the initiating court due to the financial inability of the defendant to comply with the order has no effect on the prior order of the initiating court; arrearages will accumulate on the judgment of the initiating court and, upon improvement of the defendant's financial condition, plaintiff may petition to have the payments increased in order to pay arrearages. McEvily v. McEvily, 437 A.2d 1110 (Vt., 1981).

§ 420. Effect of Participation in Proceeding.

Participation in any proceeding under this chapter does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 421. Intrastate Application.

This chapter applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the State's attorney of their receipt. The State's attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 422. Appeals.

If the State's attorney is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) Perfect an appeal to the Supreme Court if the support order was issued by a court of this State, or

(2) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on this order from funds appropriated for his office.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

Evidence.

In reviewing record in proceeding resulting in grant of child support, Supreme Court would disregard facts improperly noted by the trial court, where there was no support for them in the record, such as court's statement that there were plenty of jobs available through newspaper ads which defendant claiming inability to find employment and pay support could obtain. Bancroft v. Ackerman, 421 A.2d 1279 (Vt., 1980).

Findings.

Absent findings, Supreme Court would review record to ascertain whether order for child support was supportable. Bancroft v. Ackerman, 421 A.2d 1279 (Vt., 1980).

Subchapter 4. Registration of Foreign Support Orders

§ 423. Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 424. Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 425. Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 426. Official To Represent Obligee.

If this State is acting either as a rendering or a registering State the State's attorney upon the request of the court or the Department of Social Welfare shall represent the obligee in proceedings under this subchapter.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 427. Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof,

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) A statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this chapter.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the State's attorney of his action. The State's attorney shall proceed diligently to enforce the order.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

§ 428. Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is

vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support ordered of this State.

HISTORY: (1969, No. 191 (Adj.Sess.), § 1, eff. July 1, 1970.)

Cases

Modification of decree.

Where, during hearing on defendant's motion to modify foreign maintenance decree, the court refused to allow testimony respecting plaintiff's change of circumstances since the time of the original order, the court erroneously applied the law with respect to modification of maintenance orders, and its order denying the motion to modify would be reversed and remanded. Bullard v. Bullard (1984) 144 Vt. 627, 481 A.2d 1049.

Cited in Mancini v. Mancini, 465 A.2d 272 (Vt., 1983).

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VIRGINIA

VA. CODE §§ 20-88-12 to 20-88-31

Article 1: General Provisions

§ 20-88.12. Purposes.

The purpose of this chapter is to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (1952, ch. 516.)

Cases

This chapter was designed to create an economical and expedient means of enforcing support orders for parties located in different States. Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

This chapter is remedial in nature and should be liberally construed so that its purpose of providing support for dependent children is achieved. Id.

§ 20-88.13. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States and the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(3) "RESPONDING STATE" means any State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(4) "COURT" means a juvenile and domestic relations district court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial legal separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "OBLIGEE" means any person including a State or political subdivision to whom a duty of support is owed or any person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(9) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this chapter.

(10) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(11) "REGISTER" means to file in the Registry of Foreign Support Orders.

(12) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered.

(13) "RENDERING STATE" means any State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(14) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1952, ch. 516; 1970, ch. 669; 1974, ch. 464.)

Cases

Applied in Alig v. Alig, 220 Va. 80, 255 S.W.2d 494 (1979); Scott v. Sylvester, 220 Va. 182, 257 S.W.2d 774 (1979).

§ 20-88.14. Remedies Additional to Those Now Existing.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1952, ch. 516.)

§ 20-88.15. Extent of Duties of Support.

Duties of support arising under the laws of this State, when applicable under § 20.88.18, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.15:1. State Information Agency.

(a) The Department of Welfare is hereby designated as the State Information Agency under this law, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this law and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law.

(2) To maintain a register of such lists received from other States and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this law.

(3) To forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the law it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act as amended.

HISTORY: (1954, ch. 482; 1970, ch. 669; 1974, cc. 44, 45.)

Article 2: Criminal Enforcement

§ 20-88.16. Interstate Rendition.

The Governor of this State may:

(1) Demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or the other State.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.16:1. Necessity for Initiation of Proceedings for Support; Effect of Such Proceedings.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of

this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this chapter or that any proceeding would be of no avail.

(b) If, under a substantially similar law the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any Commonwealth's attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1970, ch. 669.)

§ 20-88.17. Relief from the Above Provisions.

Any obligor contemplated by § 20.88.18 who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

HISTORY: (1952, ch. 516.)

Article 3: Civil Enforcement

§ 20-88.18. Choice of Law.

Duties of support enforceable under this law are those imposed or imposable under the laws of any State where the obligor was present during the period or any part of the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1952, ch. 516; 1970, ch. 669; 1978, ch. 566.)

Cases

This section was designed as a conflict of laws rule which specifies the law governing the duty of support. Scott v. Sylvester, 220 Va. 182, 257 S.W.2d 774 (1979).

Section applies only when request not based on registered foreign order. The conflict of laws rule in this section becomes necessary only when the request for support is not based upon a foreign State court order. When the request for support is based upon another State's support order, § 20-88.30:6(a) applies, and no conflict results because the language of § 20-88.30:6(a) declares that the registered support order shall be treated in the same manner as a support order issued by a Virginia court. Consequently, this section is inapplicable when the support request is based upon §§ 20-88.30;1 to 20-88.30;6. Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

§ 20-88.19. Remedies of State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof has furnished support to an obligee it shall have the same right to initiate a proceeding under the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.20. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this chapter including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1952, ch. 516; 1964, ch. 494; 1970, ch. 669.)

§ 20-88.20:1. Petition by Legal Custodian of Minor Obligee.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1954, ch. 482.)

§ 20-88.20:2. Jurisdiction.

Jurisdiction of any proceedings under this chapter is vested in the juvenile and domestic relations district courts of this State.

HISTORY: (1970, ch. 669; 1974, ch. 464.)

§ 20-88.21. Contents of Petition for Support; Where Filed.

(a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and his dependents for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including, but without limitation by enumeration, a photograph of the obligor, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has

already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1952, ch. 516; 1954, ch. 482; 1970, ch. 669.)

§ 20-88.22. Duty of Court of this State as Initiating State.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and shall cause three copies of the petition, its certificate and this law to be transmitted to the court of the responding State. Certification shall be in accordance with the requirements of the initiating State. If the name and address of such court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1952, ch. 516; 1954, ch. 482; 1970, ch. 669.)

§ 20-88.22:01. Fees and Costs.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1970, ch. 669.)

§ 20-88.22:1. Obtaining Body of Defendant by Appropriate Process.

When the court of this State has reason to believe that the obligor may flee the jurisdiction it may;

(a) As an initiating court request in its certificate that the responding court obtain the body of the obligor by appropriate process if that be permissible under the law of the responding State; or

(b) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his presence at the hearing.

HISTORY: (1954, ch. 482; 1970, ch. 669.)

§ 20-88.23. Duty of Court of this State as Responding State; Prosecution of Case.

(a) When the court of this State receives from the initiating court the aforesaid copies, it shall (1) docket the case, (2) notify the official charged with the duty of carrying on the proceedings, and (3) set a time and place for a hearing.

(b) The attorney for the Commonwealth shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.23:1. Location of Obligor.

(a) The attorney for the Commonwealth on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, he shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county or city, and the attorney for the Commonwealth discovers that the obligor or his property may be found in another county or city of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or city or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this law apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the attorney for the Commonwealth has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1970, ch. 669.)

§ 20-88.23:2. Continuance of Hearing.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1970, ch. 669.)

§ 20-88.23:3. Immunity of Obligor from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he or she declines to answer upon the ground that his or her testimony may tend to incriminate him or her, the court may require him or her to answer, in which event he or she is immune from criminal prosecution with respect to matters revealed by his or her testimony, except for perjury committed in this testimony.

HISTORY: (1970, ch. 669; 1975, ch. 644.)

§ 20-88.24. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to such order. Support orders made pursuant to this law shall require that payments be made to the clerk of the court of the responding State. The court and Commonwealth's attorney of any county or city in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county or city in which it was first issued. If enforcement is impossible or cannot be completed in the county or city in which the order was issued, the Commonwealth's attorney shall send a certified copy of the order to the Commonwealth's attorney of any county or city in which it appears that proceedings to enforce the order would be effective. The Commonwealth's attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.25. Responding State To Transmit Copies to Initiating State.

The responding court shall cause to be transmitted to the initiating court a copy of all orders of support or orders for reimbursement therefor.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

§ 20-88.26. Additional Powers of Court.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

(b) To require the defendant to make payments at specified intervals to the clerk of the court or the obligee and to report personally to such clerk at such times as may be deemed necessary.

(c) To punish a defendant who violates any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court or by confinement for a period of not more than twelve months.

HISTORY: (1952, ch. 516; 1968, ch. 245.)

§ 20-88.26:1. Adjudication of Paternity Issue.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue in the same manner as if the issue arose in a support case initiated and tried in this Commonwealth. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1970, ch. 669; 1985, ch. 488, eff. Oct. 1, 1985.)

§ 20-88.27. Additional Duties of the Court of this State When Acting as a Responding State.

The court of this Commonwealth when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State or to the appropriate agency of the initiating State, and

(b) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (1952, ch. 516; 1984, ch. 604.)

§ 20-88.28. Additional Duty of the Court of this State When Acting as an Initiating State.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (1952, ch. 516.)

§ 20-88.28:1. Effect of Pending or Prior Action.

A responding court shall not stay the proceeding or refuse a hearing under this law because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require

the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1970, ch. 669.)

§ 20-88.28:2. Validity of Support Order.

A support order made by a court of this State pursuant to this law does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1970, ch. 669.)

Cases

Applicability.

This section applies to situations where two or more courts have entered support orders for different amounts. It has no relevance where the subsequent court order has relieved the obligor of all duties of support. Pace v. Pace, 222 Va. 524, 281 S.E.2d 891 (1981).

§ 20-88.28:3. Participation in Proceeding Does Not Confer Jurisdiction.

Participation in any proceeding under this law does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1970, ch. 669.)

§ 20-88.28:4. Proceedings Where Obligee and Obligor Are in Different Counties or Cities in this State.

This law applies if both the obligee and the obligor are in this State but in different counties or cities. If the court of the county or city in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county or city in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county or city in which the obligor or his property is found. The clerk of the court of the county or city receiving these documents shall notify the Commonwealth's attorney of their receipt. The

Commonwealth's attorney and the court in the county or city to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (1970, ch. 669.)

§ 20-88.28:5. Appeals.

A. When the Commonwealth's attorney having jurisdiction is of the opinion that a support order is erroneous or inadequate or presents a question of law warranting an appeal in the public interest, the Commonwealth's attorney is authorized, on behalf of the obligee:

1. To perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

2. If the support order was issued in another State, to cause an appeal to be taken in the other State.

B. In the event the Commonwealth's attorney fails or refuses to file an appeal, the obligee may file an appeal as provided in subsections A 1 and A 2 of this section.

C. The obligor shall have the right to file an appeal to the proper appellate court if the support order was issued by a court of this State or may cause the appeal to be taken in the other State if the support order was issued in another State.

HISTORY: (1978, ch. 448.)

§ 20-88.29. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are competent witnesses as to any relevant matter, including marriage and parentage.

HISTORY: (1952, ch. 516.)

Cases

This section abrogates the common-law rule excluding testimony by either spouse as to nonaccess, to prove that a child born during a marriage is illegitimate. T--- v. T---, 216 Va. 867, 224 S.E.2d 148 (1976).

§ 20-88.29:1. Processing Payments; Responsibility of Department of Social Services.

Notwithstanding any other provisions of this chapter, support payments made in this Commonwealth in cases arising under this chapter or pursuant to a similar law in another jurisdiction shall be handled by the Department of Social Services after an order redirecting payment to the Department of Social Services has been entered, and no clerk thereafter shall receive or disburse payments in such cases. The change in payment provision shall be initiated by October 1, 1985, unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts as to

individual courts. The Department shall perform all functions relating to the receipt and disbursal of such payments shall be paid to the Department of Social Services, unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts.

HISTORY: (1985, ch. 488, eff. Oct. 1, 1985.)

§ 20-88.30. Rules of Evidence.

In any hearing under this law, the court shall be bound by the same rules of evidence that bind the courts of record of this State. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (§ 20-88.26;1) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1952, ch. 516; 1970, ch. 669.)

Article 4: Registration of Foreign Support Orders

§ 20-88.30:1. Enforcement of Foreign Support Orders; Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

HISTORY: (1970, ch. 669.)

§ 20-88.30:2. Same; Obligee May Register Order.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (1970, ch. 669.)

§ 20-88.30:3. Same; Clerk To Maintain Registry.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1970, ch. 669.)

§ 20-88.30:4. Same; When Commonwealth's Attorney To Represent Obligee.

If this State is acting either as a rendering or a registering State the Commonwealth's attorney upon the request of the court shall represent the obligee in proceedings under this article.

HISTORY: (1970, ch. 669.)

§ 20-88.30:5 Enforcement of Foreign Support Orders; How Order Registered; Notice to Obligor.

A. An obligee or obligor seeking to register a foreign support order in a court of this Commonwealth shall transmit to the clerk of the court:

(1) Three certified copies of the order with all modifications thereof,

(2) One copy of the reciprocal enforcement of support act of the State in which the order was made, and

(3) A statement verified and signed by the obligee or obligor, showing the post office address of the obligee or obligor, the last known place of residence and post office address of the obligor or obligee, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered.

Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee or obligor, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this law.

B. Promptly upon registration, the clerk of the court shall send by certified or registered mail to the other party at the address given a notice of the registration with a copy of the registered support order and the post office address of the other party. He shall also docket the case and notify the Commonwealth's attorney of his action.

HISTORY: (1970, ch. 669; 1984, ch. 656.)

Cases

Applied in Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

§ 20-88.30:6. Same; Effect of Registered Order; Petition To Vacate; Hearing; Staying Enforcement.

A. Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this State and may be enforced and satisfied in like manner.

B. The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

C. At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he show to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of

the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1970, ch. 669.)

Cases

In general.

Since this chapter compels the enforcement in Virginia of a registered, though modifiable, foreign decree, it is all the more essential that the parties subject to its terms be accorded all the substantive rights regarding modification granted them in the issuing State. Due process requires no less. A trial judge is correct in applying the law of the issuing State to the retroactive modification issue. Scott v. Sylvester, 302 S.E. 2d 30 (Va.), cert. den., 104 S.Ct. 395, 78 L. Ed. 2d 338 (1983).

The question whether a party is strictly bound to the payment terms of a foreign decree must be resolved under foreign law. Id.

§ 20.88.18 inapplicable when request based on registered foreign order.

The conflict of laws rule in § 20-88.18 becomes necessary only when the request for support is not based upon a foreign State court order. When the request for support is based upon another State's support order, subsection (a) applies, and no conflict results because the language of subsection (a) declares that the registered support order shall be treated in the same manner as a support order issued by a Virginia court. Consequently, § 20-88.18 is inapplicable when the support request is based upon §§ 20-88.30;1 to 20-88.30;6. Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

Decrees enforceable even when not entitled to full faith and credit.

A foreign divorce decree which does not possess such a degree of finality as to be entitled to full faith and credit under the mandate of the Federal Constitution may be recognized and treated with the same force and effect as if it had been entered in this State under the doctrine of comity; such a result is mandated by this chapter. Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

This chapter required the State court to recognize and enforce a foreign alimony decree even though the decree did not possess such a degree of finality as to be entitled to the full faith and credit mandate of the Federal Constitution. Alig v. Alig, 220 Va. 80, 255 S.E.2d 494 (1979).

Questions of modification must be considered.

In enforcing a foreign decree for alimony arrearages under the comity doctrine, due process requires that a court consider any questions of modification raised by either party which could have been presented to the courts of the State where the decree was originally entered. Alig v. Alig, 220 Va. 80, 255 S.E.2d 494 (1979).

Full amount of arrearages under decree recoverable.

In an action brought under this chapter to recover arrearages for child support under a divorce decree entered by the circuit court of Montgomery County, Maryland, the trial court had jurisdiction to order payment of the full amount of arrears accruing under the Maryland order, rather than only the arrearages which accrued while the defendant was in Virginia. Scott v. Sylvester, 220 Va. 182, 257 S.E.2d 774 (1979).

Article 5: Construction and Title of Chapter

§ 20-88.30:7. Construction of Chapter.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (1970, ch. 669.)

§ 20-88.31. Short Title of Chapter.

This chapter may be designated and cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (1952, ch. 516; 1974, ch. 464.)

VIRGIN ISLANDS
V.I. CODE ANN. TIT. 16 §§ 391 to 429

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§ 391. Purposes of Article.

The purposes of this subchapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

Cases

In general.

A court of the Virgin Islands is authorized under this subchapter and subchapter I of this title, governing civil liability for support, to enforce any duty of support which a parent within the jurisdiction owes to a child, whether by virtue of local law or as validly declared by a foreign court having jurisdiction. Leonard v. Leonard, 18 V.I. 248 (1982).

There is a direct contradiction in the denial of alimony because a lump sum has accumulated in arrearages of support, when at the same time the amount of the lump sum is left for future determination in another court. Poe v. Poe, C.A.3d 1969, 7 V.I. 30, 409 F.2d 40.

This subchapter does not authorize suit upon foreign support judgments, as such, but merely the enforcement of any duty of support which the defendant before the court owes to the plaintiff, whether by virtue of local law or as validly declared by a foreign court having jurisdiction. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Under the provisions of this subchapter the Government of the Virgin Islands did not need to take any particular action in order to assure reciprocity, since the Uniform Reciprocal Enforcement of Support Act is not uniform throughout the United States, and since it merely provides for cooperation between the courts of jurisdictions having similar laws. 2 V.I.Op.Atty.Gen. 29.

Construction with other law.

That Uniform Reciprocal Enforcement of Support Act has been enacted in the Virgin Islands and allows action against a resident parent for nonsupport of a nonresident dependent minor child does not preclude criminal prosecution on same ground. Government of the Virgin Islands v. Audain, D.C.V.I. 1973, 10 V.I. 275.

Duty of court.

Under the provisions of this subchapter it is the duty of the court of the responding State, upon receipt of the petition and certificate from the court of the initiating State, to determine whether the husband has a duty to support the wife and their children, and if so to order such support. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Former wife.

The provisions of this subchapter are broad enough to authorize the enforcement of a duty to support a former wife, if such a duty is found to exist. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

§ 392. Definitions.

As used in this subchapter, unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico;

(2) "INITIATING STATE" means any State in which a proceeding pursuant to this subchapter or a substantially similar reciprocal law is commenced;

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced;

(4) "COURT" means the juvenile and domestic relations division of the Municipal Court of the proper judicial division, and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law;

(5) "LAW" includes both common and statute law;

(6) "DUTY OF SUPPORT" includes any duty of support imposed, or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise;

(7) "OBLIGOR" means any person owing a duty of support;

(8) "OBLIGEE" means any person to whom a duty of support is owed.

Cases

Construction with other laws.

Par. (6) of this section combined with § 423 of this title empowers the Municipal Court of the Virgin Islands to enforce a duty of support which has been validly imposed by a judgment, decree or order of the court of another State. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Duty of support.

By the definition in this section of "duty of support" it is clear that duty of support imposed by court order, decree or judgment becomes a duty imposed by the laws of the Virgin Islands within the meaning of § 411 of this title, which provides that duties of support applicable under this subchapter "are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought." Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Interlocutory judgments.

A State or territory by enacting the Uniform Reciprocal Enforcement of Support Act (this subchapter) has chosen to enforce the duty of support declared by a foreign court even though the judgment of the latter is merely interlocutory as par. (6) of this section specifically contemplates that it may be, and, therefore, not enforceable under the full faith and credit clause of the Federal constitution by direct suit upon it. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

§ 393. Remedies as Additional.

The remedies provided in this subchapter are in addition to and not in substitution for any other remedies.

§ 394. Extent of Duties of Support.

Duties of support arising under the laws of this territory, when applicable under § 411 of this title, bind the obligor, present in this territory, regardless of the presence or residence of the obligee.

§ 401. Interstate Rendition.

The Governor of this territory may:

(1) Demand from the Governor of any other State the surrender of any person found in such other State who is charged with the crime of failing to provide for the support of any person in this territory; and

(2) Surrender on demand by the Governor of any other State any person found in this territory who is charged in such other State with the crime of failing to provide for the support of a person in such other State.

The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath, nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

§ 402. Relief from the Above Provisions.

Any obligor contemplated by § 401 of this title, who submits to the jurisdiction of the court of such other State and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this territory during the period of such compliance.

§ 411. Choice of Law.

Duties of support applicable under this subchapter are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

Cases

Foreign judgment or decree.

Under the statutory definition of "duty of support" in § 392 of this title, it is clear that duty of support imposed by court order, decree or judgment becomes a duty imposed

by the laws of the Virgin Islands within the meaning of this section, which provides that duties of support applicable under this subchapter "are those imposed or imposable under the laws of any state where the obligor was present during the period for which support is sought." Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

District Court's determination that foreign decree, which incorporated a prior separation agreement into a divorce decree, was not a court decree imposing a duty of support under this section because it had not been rendered by a Virgin Islands court, was erroneous as such interpretation would violate the spirit as well as the letter of this subchapter. Id.

Separation agreement.

Where a separation agreement was made part of a later foreign divorce decree and the decree ordered that the agreement in its entirety should survive the divorce, there was an outstanding court decree which imposed upon a party the duty to support. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

§ 412. Remedies of a State or Political Subdivision Thereof Furnishing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions of this subchapter as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

§ 413. How Duties of Support Are Enforced.

All duties of support are enforceable by action irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the juvenile and domestic relations divisions of the Municipal Courts.

Cases

Jurisdiction.

The Municipal Court of the Virgin Islands has general jurisdiction of support orders under this subchapter whereas the only jurisdiction of the District Court of such orders is on appeal. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

§ 414. Contents of Petition for Support.

The petition shall be verified and shall state the name and, so far as known to the plaintiff, the address and circumstances of the defendant, his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the petition any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

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§ 415. Officials To Represent Plaintiff.

The United States attorney, upon the request of the court, shall represent the plaintiff in any proceeding under this subchapter.

§ 416. Petition for a Minor.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

§ 417. Duty of Court of this Territory as Initiating State.

If the court of this territory acting as an initiating State finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding State may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate, and (3) this subchapter, to be transmitted to the court in the responding State. If the name and address of that court is unknown and the responding State has an information agency comparable to that established in the initiating State, it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

§ 418. Costs and Fees.

A court of this territory acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this territory, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant, or either, shall be paid by the government of the Virgin Islands.

§ 419. Jurisdiction by Arrest.

When the court of this territory, acting either as an initiating or responding State, has reason to believe that the defendant may flee the jurisdiction it may:

(1) As an initiating State request in its certificate that the court of the responding State obtain the body of the defendant by appropriate process if that be permissible under the law of the responding State; or

(2) As a responding State, obtain the body of the defendant by appropriate process.

§ 420. State Information Agency.

The United States attorney is hereby designated as the State Information Agency under this subchapter. He shall:

(1) Compile a list of the courts and their addresses in this territory having jurisdiction under this subchapter and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar law; and

(2) Maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this territory having jurisdiction under this subchapter.

§ 421. Duty of the Court of this Territory as Responding State.

When the court of this territory acting as a responding State, receives from the court of an initiating State the aforesaid copies, it shall (1) docket the case; (2) notify the United States attorney; (3) set a time and place for a hearing; and (4) take such action as is necessary in accordance with the laws of this territory to obtain jurisdiction.

§ 422. Further Duty of Responding Court.

If a court of this territory, acting as a responding State, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies or inadequacies in the petition or otherwise, the court shall communicate this fact to the court in the initiating State, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating State.

§ 423. Order of Support.

If the court of the responding State finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

Cases

In general.

Under this section the Municipal Court is authorized, if it finds a duty to support, to order support payments. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Liens.

Where the court ascertained that a sum for arrearage of child support payments to the plaintiff existed, the court imposed a lien on whatever interest the defendant, plaintiff's former husband, had in a real estate plot purchased by the parties during their marriage. Maharaj v. Looknanan, 18 V.I. 134 (1982).

Construction with other laws.

This section combined with § 392(6) of this title empowers the Municipal Court of the Virgin Islands to enforce a duty of support which has been validly imposed by a judgment, decree or order of the court of another State. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

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Foreign separation agreement.

Where a separation agreement was made part of a later foreign divorce decree and the decree ordered that the agreement in its entirety should survive the divorce, there was an outstanding court decree which imposed upon a party the duty to support. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Amount of support.

Under this subchapter it is only the duty to support determined by the foreign judgment, and not the amount of support thereby decreed, which is binding on the court of the responding State. Lorillard v. Lorillard, C.A.3d 1966, 5 V.I. 483, 358 F.2d 172.

Having found the duty to support, either under local law or by virtue of a valid foreign judgment, the Municipal Court is given discretionary power by this section, to determine the amount of support to be awarded upon consideration of the resources of the person obligated to give it and the necessities of the party who is to receive it as provided by § 345 of this title. Id.

Reciprocity.

New York State legislation relative to enforcement of support enables the courts of New York to enforce a support order issued in the Virgin Islands against a person living at the time in New York, provided the Virgin Islands would give similar effect to a like order issued against a New Yorker living in the Virgin Islands. 2 V.I.Op.Atty.Gen. 1.

§ 424. Additional Powers of Court.

In addition to the foregoing powers, the court of the State when acting as the responding State may subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular to:

(1) Require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) Require the defendant to make payments at specified intervals at the Office of the Attorney General or the obligee and to report personally to such office at such times as may be deemed necessary; and

(3) Punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any suit or proceeding cognizable by the court.

§ 425. Additional Duty of the Court of this Territory When Acting as a Responding State.

When the court of this territory is acting as a responding State, the Office of the Attorney General shall have the following duties:

(1) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State; and

(2) Upon request, to furnish to the court of the initiating State a certified statement of all payments made by the defendant.

HISTORY: (Am.Sess. L. 1972, No. 3174, § 2, p. 28, Feb. 28, 1972.

§ 426. Additional Duty of the Court of this Territory When Acting as an Initiating State.

When the court of this territory is acting as an initiating State, the Office of the Attorney General shall have the duty to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding State.

HISTORY: (Am.Sess. L. 1972, No. 3174, § 3, p. 28, Feb. 28, 1972.

§ 427. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this subchapter. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

§ 428. Application of Payments.

Any order of support issued by a court of this territory when acting as a responding State shall not supersede any previous order of support issued in a divorce or separate maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

§ 429. Effect of Participation in Proceeding.

Participation in any proceeding under this subchapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

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§ 26-21-010. Definitions.

As used in this chapter unless the context requires otherwise:

(1) "STATE" includes any State, territory or possession of the United States and the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law or procedure is in effect.

(2) "INITIATING STATE" means any State in which any proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "RESPONDING STATE" means any State in which any proceeding pursuant to the proceeding in the initiating State is or may be commenced.

(4) "COURT" means the superior court of this State and when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(5) "LAW" includes both common and statute law.

(6) "DUTY OF SUPPORT" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, separate maintenance or otherwise.

(7) "OBLIGOR" means any person owing a duty of support.

(8) "OBLIGEE" means any person to whom a duty of support is owed and a State or political subdivision thereof.

(9) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any territory covered by the provisions of this chapter.

(10) "SUPPORT ORDER" means any judgment, decree or order of support whether temporary or final, whether subject to modification, revocation or remission regardless of the kind of action in which it is entered.

(11) "RENDERING STATE" means any State in which a support order is originally entered.

(12) "REGISTERING COURT" means any court of this State in which the support order of the rendering State is registered.

(13) "REGISTER" means to file in the Registry of Foreign Support Orders as required by the Court.

(14) "CERTIFICATION" shall be in accordance with the laws of the certifying State.

HISTORY: (Am.L. 1963, ch.45 § 1, eff. March 19, 1963; L. 1st Ex. Sess. 1972, ch. 31, § 1.)

Cases

Reciprocal support acts, being remedial in nature, are to be construed liberally with reference to object to be obtained. Davidson v. David n (1965) 66 Wn.2d 780, 405 P.2d 261.

Where wife secures divorce without having had personal service on husband in another State having a uniform reciprocal support act, action to enforce judgment in this State has as only real issue duty of support, and the amount thereof may be independently determined in court of this State to be different from that called for in divorce decree; and duty of support is to be determined by reference to laws of this State. Id.

§ 26-21-020. Remedies Are Additional.

Cases

Regardless of the specific relationship between one obligated to support a dependent and that dependent, once a duty to support has been found under Wash.Rev. Code 26-21 (the Uniform Reciprocal Enforcement of Support Act), such duty will be imposed and enforced in addition to any other possible remedies under other statutes. Yetter v. Commeau (1974) 84 Wn.2d 155, 524 P.2d 901.

A proceeding under Wash. Rev. Code 26-21, the Uniform Reciprocal Enforcement of Support Act, may resolve the question of a dependent's paternity without resort to actions under other statutes and with full protection of the civil rights of the parties involved in order to ascertain, impose, and enforce a duty of support upon a parent. Id.

§ 26-21-030. Residence; Presence of Obligee Not Material.

Duties of support arising under the law of this State, when applicable under Wash.Rev.Code 26-21-060, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

HISTORY: (Am.L. 1963, ch. 45, §2, eff. March 19, 1963.)

Cases

Responsibility of putative unmarried father for support of his children may be proved in every cause where pertinent, regardless of existence of filiation statutes. State v. Russell (1966) 68 Wn.2d 748, 415 P.2d 503.

Uniform Reciprocal Enforcement of Support Act, Wash.Rev.Code Ann. 26-21-010 et seq., proceeding could be maintained by wife despite fact that she departed from the marital domicile and moved to another jurisdiction. Valley v. Selfridge (1982) 30 Wn.App. 908, 639 P.2d 225.

§26-21-040. Extradition or Surrender of Obligor.

The Governor of this State:

(1) May demand from the Governor of any other State the surrender of any person found in such other State who is charged in this State with the crime of failing to provide for the support of any person in this State; and

(2) May surrender on demand by the Governor of any other State any person found in this State who is charged in such other State with the crime of failing to provide for the support of any person in such other State.

The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other State.

HISTORY: (Am.L. 1963, ch. 45, §3 eff. March 19, 1963.

§ 26-21-050. Extradition or Surrender of Obligor; Conditions.

(1) Before making the demand of the Governor of any other State for the surrender of a person charged in this State with the crime of failing to provide for the support of any person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee brought an action for support under this chapter, or that bringing of an action would be of no avail.

(2) When under this or a substantially similar act, a demand is made upon the Governor of this State by the Governor of another State for the surrender of a person charged in the other State with the crime of failing to provide support, the Governor may call upon any prosecuting attorney to investigate or assist in investigating the demand, and to report to him whether any action for support has been brought under this chapter or would be effective: provided, that before honoring such demand the Governor shall require proof of a duty of support arising from a support order based upon competent jurisdiction over the obligor.

(3) Except as is provided for in the proviso to the subsection (2) of this section if an action for support would be effective and no action has been brought, the Governor may delay honoring the demand for a reasonable time to permit prosecution of an action for support.

(4) If an action for support has been brought and the person demandd has prevailed in that action, the Governor shall decline to honor the demand.

(5) If an action for support has been brought and pursuant thereto the person demanded is subject to a support order, the Governor shall decline to honor the demand so long as the person demanded is complying with the support order.

HISTORY: (Am.L. 1963, ch. 45 § 4, eff. March 19, 1963; L. 1st Ex. Sess. 1971, ch. 46, § 30, eff. July 1, 1971.)

§ 26-21-060. Duty to Support; Which Law Applies; Presumption of Presence in Responding State.

Duties of support applicable under this law are those imposed or imposable under the laws of any State where the obligor was present during the period for which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (Am.L. 1963, ch. 45, § 5, eff. March 19, 1963.)

Cases

Rule that, in absence of contractual choice of law provision, law of State with which contract has most significant relationship will govern validity and effect of contract is equally applicable to laws of foreign country. Untersteiner v. Untersteiner (1982) 32 Wn.App. 859, 650 P.2d 256.

In action brought to enforce Missouri divorce decree's provisions for child support and alimony, Missouri statute which creates conclusive presumption of payment that extinguishes judgment creditor's right of action, and not local State law, applied. Sobo v. Sobo (1981) 28 Wn.App. 766, 626 P.2d 520.

Natural mother and her daughter did not qualify as "any interested party" and, hence, could not bring an action at any time for the purpose of establishing the paternity of a putative father in a situation where there was a presumed father, but were required to bring the action within a reasonable time, and were barred from obtaining relief when the action was filed some 13 years after birth of the daughter and more than 3 years after the governing statute, Wash.Rev.Code Ann. 26-26-060, was adopted. Miller v. Sybouts (1981) 29 Wn.App. 663, 630 P.2d 477.

In a situation where there is a presumed father, an action by the mother, the child or the presumed father to rebut the presumption and establish paternity in another must be brought within a reasonable time after knowledge of the relevant facts is established.

Provisions of Wash.Rev.Code Ann. 26-26-060, which provides that "any interested party" or the Department of Social and Health Services or the State of Washington may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship, applies to interested parties other than a child, his natural mother, or a man presumed to be his father. Id.

In a Uniform Reciprocal Enforcement of Support Act action, responding State had authority to increase the amount of child support father was required to pay over that set in the original dissolution decree. Jaramillo v. Jaramillo (1980) 27 Wn.App. 391, 618 P.2d 528.

A putative father has a duty to support an illegitimate child. Yetter v. Commeau (1974) 84 Wn.2d 155, 524 P.2d 901.

Where wife secures divorce without having had personal service on husband in another State having Uniform Reciprocal Support Act, action to enforce judgemnet in this State has as only real issue duty of support, and the amount thereof may be independently determined in courts of this State to be different from that called for in divorce decree; and duty of support is to be determined by reference to laws of this State. Davidson v. Davidson (1956) 66 Wn.2d 780, 405 P.2d 261.

§ 26-21-070. Subrogation by State or Political Subdivision for Support Furnished Obligee; Continuing Support.

Whenever the State or a political subdivision thereof furnishes support to an obligee it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purposes of securing reimbursement of expenditures so made and of obtaining continuing support.

HISTORY: (Am.L. 1963, ch. 45, § 6, eff. March 19, 1963.)

Prior to judicial determination of paternity, there can be no duty to support on part of putative father and no tortious act within meaning of long-arm statute, and thus petition to establish paternity and obtain child support should have been dismissed for lack of personal jurisdiction. In re Doe, 684 P.2d 1368 (Wash., 1984).

Under Wash.Rev.Code Ann. 26.26.070,. providing that petitioner, in action to determine existence of father and child relationship, may petition court to issue warrant for arrest of alleged father, there is no requirement that alledged father be arrested prior to entry of default judgment against him, since the use of the word "may" in statute indicates that statute is to be used at discretion of petitioner or the court. Hayward v. Hansen (1981) 29 Wn.App. 400, 628 P.2d 1326.

26-21-080. Support and Arrearages Enforceable by Action; Jurisdiction.

All duties of support, including arrearages are enforceable by action irrespective of the relationship between the obligor and the obligee. Jurisdiction of all proceedings hereunder shall be vested in the superior court.

HISTORY: (Am.L. 1963, ch. 45, § 7, eff. March 19, 1963.)

Cases

Prior to judicial determination of paternity, there can be no duty to support on part of putative father and no tortious act within meaning of long-arm statute, and thus petition to establish paternity and obtain child support should have been dismissed for lack of personal jurisdiction. In re Doe, 684 P.2d 1368 (Wash., 1984).

Proceeding under Uniform Reciprocal Enforcement of Support Act to collect child support from divorced father could be commenced by means of order to show cause rather than summons and petition since show cause hearing satisfied due process requirements. State ex rel. Burleigh v. Johnson (1982) 31 Wn.App. 704, 644 P.2d 732.

Evidence in action by former wife against collection agency retained to collect past-due child support supported finding that collection agency induced former wife to refrain from utilizing statutory methods of collecting child support, that misleading advertisements and promises that collection agency could collect unpaid child support and guarantee its results had the clear potential for repetition, and that as a result former wife was damaged, therefore supporting conclusion that collection agency violated the Consumer Protection Act. Ulber v. Seattle Bonded, Inc. (1981) 28 Wn.App. 762, 626 P.2d 522.

In a mother's action against her divorced husband for an increase in his child support obligations, a State court's exercise of in personam jurisdiction over the nonresident, nondomiciliary father of minor children domiciled in the State violated the due process

clause of the 14th Amendment, even though the father had acquiesced in the desire of one of his children to live with the mother in the forum State. Kulko v. Superior Court of California (1978) 436 US 84, 56 L.Ed. 2d 132, 98 S.Ct. 1690.

The limitations on State jurisdiction imposed by the 14th Amendment did not permit a State court to base its exercise of jurisdiction over a nonresident spouse, in an action relating to child support, exclusively on the fact that two domiciliaries of a foreign State, for reasons of convenience, had married in the forum State, where the parties had thereafter spent their entire married life in the foreign State. Id.

A proceeding under Wash.Rev.Code 26-21, the Uniform Reciprocal Enforcement of Support Act, may resolve the question of a dependent's paternity without resort to actions under other statutes and with full protection of the civil rights of the parties involved in order to ascertain, impose, and enforce a duty of support upon a parent. Yetter v. Commeau (1974) 84 Wn.2d 155, 524 P.2d 901.

Responsibility of putative unmarried father for support of his children may be proved in every cause where pertinent, regardless of existence of filiation statutes. State v. Russell (1966) 68 Wn.2d 748, 415 P.2d 503.

Where wife secures a divorce without having had personal service on husband in another State having a uniform reciprocal support act, action to enforce the judgment in this State has as only real issue duty of support, and amount thereof may be independently determined in courts of this State to be different from that called for in divorce decree; and duty of support is determined by reference to laws of this State. Davidson v. Davidson (1965) 66 Wn.2d 780, 405 P.2d 261.

§ 26-21-090. Petition; Contents.

The petition shall be verified and shall state the name and, so far as known to the petitioner, the address and circumstances of the respondent and his dependents for whom support is sought and all other pertinent information. The petitioner may include in or attach to the petition any information which may help in locating or identifying the respondent, such as a photograph of the respondent, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or Social Security number.

HISTORY: (Am.L. 1963, ch. 45, § 8, eff. March 19, 1963.)

§ 26-21-092. Duty of Prosecuting Attorney to Represent Petitioner.

The prosecuting attorney, upon the request of the court, shall represent the petitioner in any proceeding under this chapter.

HISTORY: (L. 1963, ch. 45, § 9, eff. March 19, 1963.)

§ 26-21-094. Petition on Behalf of Minor Obligee.

A petition on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1963, ch. 45, § 10, eff. March 19, 1963.)

§ 26-21-100. Findings of Court; Certificate; Transmittal.

If the court of this State acting as an initiating State finds that the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that a court of the responding State may obtain jurisdiction of the respondent or his property; it shall so certify and shall cause three copies of (1) the petition, (2) its certificate and (3) this chapter to be transmitted to the court in the responding State. If the name and address of such court is unknown and the responding State has an information agency comparable to that estabished in the initiating State it shall cause such copies to be transmitted to the State Information Agency or other proper official of the responding State, with a request that it forward them to the proper court, and that the court of the responding State acknowledge their receipt to the court of the initiating State.

HISTORY: (Am.L. 1963, ch. 45, § 11, eff. March 19, 1963.)

Cases

Use of show cause procedure to commence proceedings under Uniform Reciprocal Enforcement of Support Act, Wash.Rev.Code Ann. 26-21-010 et seq., for collection of child support did not violate equal protection since procedures applied alike to all fathers living in State with dependents living in another State or another county within State. State ex rel. Burleigh v. Johnson (1982) 31 Wn.App. 704, 644 P.2d 732.

Responsibility of putative unmarried father for support of his children may be proved in every cause where pertinent, regardless of existence of filiation statutes. State v. Russell (1966) 68 Wn.2d 748, 415 P.2d 503.

§ 26-21-102. Responsibility for Filing Fees and Court Costs.

There shall be no filing fee or other costs taxable to the obligee but a court of this State acting either as an initiating or responding State may in its discretion direct that any part of or all fees and costs incurred in this State, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both petitioner and respondent or either, be paid by the obligor.

HISTORY: (L. 1963, ch. 45, § 12, eff. March 19, 1963.)

§ 26-21-104. Jurisdiction by Arrest.

When the court of this State, acting either as an initiating or responding State, has reason to believe that the respondent may flee the jurisdiction it may:

(1) As an initiating State request in its certificate that the court of the responding State obtain the body of the respondent by appropriate process if that be permissible under the law of the responding State, or

(2) As a responding State, obtain the body of the respondent by appropriate process.

HISTORY: (L. 1963, ch. 45, § 13, eff. March 19, 1963.)

§ 26-21-106. Powers and Duties of Attorney General; Information Agency.

The Attorney General is hereby designated as the State Information Agency under this chapter, and he shall (1) compile a list of the courts and their addresses in this State having jurisdiction under this chapter and transmit the same to the State Information Agency of every other State which has adopted this or a substantially similar act, and (2) maintain a register of such lists received from other States and transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this chapter.

The Attorney General shall appoint as information agent an Assistant Attorney General who shall represent the Attorney General in the administration of this chapter.

The Attorney General may, upon notice to the prosecuting attorney and order of the court, represent the petitioner in any proceeding arising under this chapter which involves a petition received from another State.

HISTORY: (L. 1963, ch. 45, § 14, eff. March 19, 1963.)

§ 26-21-110. Duties of Court, Responding; Duties of Prosecuting Attorney.

(1) After the court of this State, acting as a responding State has received from the court of the initiating State the aforesaid copies, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) It shall be the duty of the prosecuting attorney diligently to prosecute the case. He shall take all action necessary in accordance with the laws of this State to give the court jurisdiction of the respondent or his property and shall request the court to set a time and place for a hearing.

HISTORY: (Am.L. 1963, ch. 45, § 15, eff. March 19, 1963.)

Cases

Use of show cause procedure to commence proceedings under Uniform Reciprocal Enforcement of Support Act, Wash.Rev.Code Ann. 26-21-010 et seq., for collection of child support did not violate equal protection since procedures applied alike to all fathers living in State with dependents living in another State or another county within State. State ex rel. Burleigh v. Johnson (1982) 31 Wn.App. 704, 644 P.2d 732.

Where wife has alleged that her husband has duty of support, in action brought in another State where personal service on husband could not be had, this statute may be invoked to compel husband to appear in courts of this State to determine rights, needs and duty of support; and to grant immunity in such cases because of lack of personal service violates rules of comity and reciprocity subscribed to in Uniform Reciprocal Enforcement of Support Act. Davidson v. Davidson (1965) 66 Wn.2d 780, 405 P.2d 261.

§ 26-21-112. Duty of Prosecuting Attorney To Locate Respondent or His Property; Forwarding of Documents when Respondent in Other Jurisdiction; Notice to Initiating Court.

(1) The prosecuting attorney shall, on his own initiative, use all means at his disposal to trace the respondent or his property and if, due to inaccuracies of the petition or otherwise, the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the court in the initiating State.

(2) If the respondent or his property is not found in the county and the prosecuting attorney discovers by any means that the respondent or his property may be found in another county of this State or in another State he shall so inform the court and thereupon the clerk of the court shall forward the documents received from the court in the initiating State to the court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that he forward the documents to the proper court. Thereupon both the court of the other county and any court of this State receiving the documents and the prosecuting attorney have the same powers and duties under this Act as if the documents had been originally addressed to him. When the clerk of a court of this State retransmits documents to another court, he shall notify forthwith the court from which the documents came.

(3) If the prosecuting attorney has no information as to the whereabouts of the obligor or his property he shall so inform the initiating court.

HISTORY: (L. 1963, ch. 45, § 16, eff. March 19, 1963.)

§ 26-21-114. Proceedings To Accord Type of Support Claimed.

The court shall conduct proceedings under this chapter in the manner prescribed by law for an action for enforcement of the type of duty of support claimed.

HISTORY: (L. 1963, ch. 45, § 17, eff. March 19, 1963.)

§ 26-21-116. Continuance When Petitioner Absent from Responding State.

If the petitioner is absent from the responding State and the respondent presents evidence which constitutes a defense, the court shall continue the case for further hearing and the submission of evidence by both parties.

HISTORY: (L. 1963, ch. 45, § 18, eff. March 19, 1963.)

§ 26-21-120. Order to Support; Enforcement Against Property; Enforcement in Counties Other than Where Order Issued.

If the court of the responding State finds a duty of support, it may order the respondent to furnish support or reimbursement therefor and subject the property of the respondent to such order. The court and prosecuting attorney of any county where the obligor is present or has property have the same powers and duties to enforce the order as have those of the county where it was first issued. If enforcement is impossible or cannot be completed in the county where the order was issued, the prosecuting attorney shall

transmit a certified copy of the order to the prosecuting attorney of any county where it appears that procedures to enforce payment of the amount due would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (Am.L. 1963, ch. 45, § 19 eff. March 19, 1963.)

Cases

Amount of child support called for in divorce decree was not amended or modified by agreed Uniform Reciprocal Enforcement of Support Act (Wash.Rev.Code Ann. 26-21-010 et seq.) order. Valley v. Selfridge (1982) 30 Wn.App. 908, 639 P.2d 225.

Where wife secures divorce without having had personal service on husband in another State having Uniform Reciprocal Support Act, action to enforce the judgment in this State has as only real issue duty of support, and amount thereof may be independently determined in courts of this State to be different from that called for in divorce decree; and duty of support is determined by reference to laws of this State. Davidson v. Davidson (1965) 66 Wn.2d 780, 405 P.2d 261.

§ 26-21-125. Orders; Notice of Mandatory Wage Assignment; Social Security Number.

Every court order or decree establishing a child support obligation shall State that, if a support payment is more than fifteen days past due in an amount equal to or greater than the support payable for one month, the obligee of the support payments may seek a mandatory wage assignment under Wash.Rev.Code 26-18 without prior notice to the obligor. Failure to include this provision does not affect the validity of the support order. If the Social Security number of the person obligated to make child support payments under the support order or decree is available, the court shall require that the Social Security number of the obligor be included in the order or decree.

HISTORY: (L. 1984, ch. 260, § 22.)

§ 26-21-130. Orders; Transmittal to Initiating State.

The court of this State when acting as a responding State shall cause to be transmitted to the court of the initiating State a copy of all orders of support or for reimbursement therefor.

HISTORY: (Am.L. 1963, ch. 45, § 20, eff. March 19, 1963.)

§ 26-21-140. Orders; Enforcement; Particular Powers.

In addition to the foregoing powers, the court of this State when acting as the responding State has the power to subject the respondent to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular:

(1) To require the respondent to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the respondent;

(2) To require the respondent to make payments at specified intervals to the clerk of the court and to report personally to such clerk at such times as may be deemed necessary; and

(3) To punish the respondent who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

HISTORY: (Am.L. 1963, ch. 45, § 21, eff. March 19, 1963.)

Cases

Responding State may decrease obligor's obligation as to the Uniform Reciprocal Enforcement of Support Act action only if circumstances warrant it. Valley v. Selfridge (1982) 30 Wn.App. 908, 639 P.2d 225.

Uniform Reciprocal Enforcement of Support Act's agreed order, which did not specify allocation of payments, did not require that payments made under the order apply to and pay support obligations under divorce decree rather than be applied to the months paid. Id.

Amount of child support called for in divorce decree was not amended or modified by agreed Uniform Reciprocal Enforcement of Support Act (Wash.Rev.Code Ann. 26-21-010 et seq.) order. Id.

§ 26-21-150. Payments; Transmittal; Statement.

The court of this State when acting as a responding State shall have the following duties which may be carried out through the clerk of the court:

(1) Upon the receipt of a payment made by the respondent pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating State, and

(2) Upon request to furnish to the court of the initiating State a certified statement of all payments made by the respondent.

HISTORY: (Am.L. 1963, ch. 45, § 22, eff. March 19, 1963.)

26-21-160 Payments; Receipt; Disbursement.

The court of this State when acting as an initiating State shall have the duty which may be carried out through the clerk of the court to receive and disburse forthwith all payments made by the respondent or transmitted by the court of the responding State.

HISTORY: (Am.L. 1963, ch. 45, § 23, eff. March 19, 1963.)

§ 26-21-170. Evidence; Spouse as Witness.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter. Husband and wife are

competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (Am.L. 1963, ch. 45, § 24, eff. March 19, 1963.)

§ 26-21-180. Proceedings Not Stayed by Actions for Divorce, Separate Maintenance, Etc.

No proceeding under this chapter shall be stayed because of the existence of a pending action for divorce, separate maintenance, annulment, dissolution, habeas corpus or custody proceeding.

HISTORY: (L. 1963, ch. 45, § 25, eff. March 19, 1963.)

§ 26-21-190. Multiple Orders of Support; Effect; Application of Payments.

No order of support issued by a court of this State when acting as a responding State shall supersede any other order of support but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

HISTORY: (L. 1963, ch. 45, § 26, eff. March 19, 1963.)

Cases

In a Uniform Reciprocal Enforcement of Support Act action, responding State had authority to increase the amount of child support father was required to pay over that set in the original dissolution decree. Jaramillo v. Jaramillo (1980) 27 Wn.App. 391, 618 P.2d 528.

§ 26-21-200. Jurisdiction as to Other Proceedings Not Conferred.

Participation in any proceeding under this chapter shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

HISTORY: (L. 1963, ch. 45, § 27, eff. March 19, 1963.)

§ 26-21-210. Intercounty Proceedings.

This chapter is applicable when both the petitioner and the respondent are in this State but in different counties. If the court of the county in which this petition is filed finds that the petition sets forth facts from which it m ay be determined that the respondent owes a duty of support and finds that a court of another county in this State may obtain jurisdiction of the respondent or his property, the clerk of the court shall send three copies of the petition and a certification of the findings to the court of the county in which the respondent or his property is found. The clerk of the court of the county receiving these copies shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded shall

then have duties corresponding to those imposed upon them when acting for the State as a responding State.

HISTORY: (L. 1963, ch. 45, § 28, eff. March 19, 1963.)

§ 26-21-220. Foreign Support Order, Additional Remedies of Obligee; Duty of Prosecuting Attorney.

If the duty of support is based on a foreign support order, the obligee has the addtional remedies provided in the following sections and the prosecuting attorney shall, pursuant to the provisions of Wash.Rev.Code 26-21-092, represent the petitioner upon the request of the court in asserting the remedies provided for therein.

HISTORY: (L. 1963, ch. 45, § 29, eff. March 19, 1963.)

§ 26-21-230. Foreign Support Order, Additional Remedies of Obligee; Registration of Order.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

HISTORY: (L. 1963, ch. 45, § 30, eff. March 19, 1963.)

§ 26-21-240. Foreign Support Order, Additional Remedies of Obligee; Clerk To File in Registry.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (L. 1963, ch. 45, § 31, eff. March 19, 1963.)

§ 26-21-250. Foreign Support Order, Additional Remedies of Obligee; Petition for Registration.

The petition for registration shall be verified and shall set forth the amount remaining unpaid and a list of any other States in which the support order is registered and shall have attached to it a certified copy of the support order with all modifications thereof. The foreign support order is registered upon the filing of the petition subject only to subsequent order of confirmation.

HISTORY: (L. 1963, ch. 45, § 32, eff. March 19, 1963.)

§ 26-21-260. Foreign Support Order, Additional Remedies of Obligee; Jurisdiction and Procedure.

The procedure to obtain jurisdiction of the person or property of the obligor shall be as provided in civil cases. The obligor may assert any defense available to a defendant in an action on a foreign judgment. If the obligor defaults, the court shall enter an order confirming the registered support order and determining the amounts remaining unpaid. If

the obligor appears and a hearing is held, the court shall adjudicate the issues including the amounts remaining unpaid.

HISTORY: (L. 1963, ch. 45, § 33, eff. March 19, 1963.)

§ 26-21-270. Foreign Support Order, Additional Remedies of Obligee; Effect and Enforcement.

The support order as confirmed shall have the same effect and may be enforced as if originally entered in the court of this State. The procedures for the enforcement thereof shall be as in civil cases, including the power to punish the respondent for contempt as in the case of orders for payment of alimony, maintenance or support entered in this State.

HISTORY: (L. 1963, ch. 45, § 34, eff. March 19, 1963.)

§ 26-21-900. Purpose.

The purpose of this chapter are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

HISTORY: (Enact.L. 1951, ch. 11196, § 1, p. 584.)

Cases

Reciprocal support acts, being remedial in nature, are to be construed liberally with reference to object to be obtained. Davidson v. Davidson (1965) 66 Wn.2d 780, 405 P.2d 261.

§ 26-21-910. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

HISTORY: (L. 1963, ch. 45, § 35, eff. March 19, 1963.)

Cases Under Prior Statute

As defined by West's California Ann. Code Civ. Proc. § 1653, "obligor" is the person owing a duty of support, and "obligee" is the person to whom a duty of support is owed. Ex parte Floyd (1954) 43 C.2d 379, 273 P.2d 820.

Superior court could not enter order for temporary child support payments pending hearing on merits of petition under Uniform Reciprocal Enforcement of Support Act. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359, P.2d 811.

Because of practical difficulties, appeal from order for temporary child support pending hearing on merits of petition under Uniform Reciprocal Enforcement of Support Act was inadequate, and certiorari was proper.

§ 26-21-020. Remedies Are Additional.

Decisions in other States.

Where Maryland resident, whose children were domiciled in Delaware, was prosecuted under Code 1951, art. 27, § 96(b), imposing penalty for nonsupport of minor children regardless of presence or residence of children, Code 1951, art. 89c, § 3, did not provide remedy to exclusion of criminal prosecution. State v. James (1953) 100 A.2d 12, 203 Md. 113.

Remedies under N.J.Stat.Ann. 2A:4-30.3 are in addition to and not in substitution for any other remedies. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super.117, aff'd 123 A.2d 3, 21 N.J. 599.

Minn.Stat.Ann. § 518.41 et seq., is to be construed not merely as preserving all existing remedies intact, but as providing additional remedies which are supplementary and ancillary to all existing remedies. State of Ill. ex rel. Shannon v. Sterling (1956) 80 N.W.2d 13, 248 Minn. 266.

§ 26-21-030. Residence; Presence of Obligee Not Material.

The duty of a father to support his minor children is a duty flowing directly from him to them without regard to any marital dereliction of his wife. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

Where wife under Minnesota divorce decree was awarded the custody of the minor children of the parties subject to the husband's right of reasonable visitation, deprived husband of such visitation rights by removing children out of the State without husband's consent or court approval, husband was relieved from payment of all unpaid installments of support money accruing during period he had been denied his right of visitation. State of Ill. ex rel. Shannon v. Sterling (1956) 80 N.W.2d 13, 248 Minn. 266.

Only reasonable cause justifying husband's refusal to support wife is conduct on her part which would be valid ground for a divorce decree. Com. ex rel. Rovner v. Rovner (1955) 111 A.2d 160, 177 Pa.Super. 122; Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

A husband, in order to defeat his duty to support, must show conduct by his wife that would entitle him to a divorce. Com. v. Williams (1955) 116 A.2d 297, 178 Pa.Super. 313.

Where husband had gross income of $9,300 and net annual income of upwards of $7,100 and wife, a school teacher, during period of sick leave was receiving benefits from school district at the annual rate of $2,700, court order of $35 per week for support of wife was not excessive. Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

A husband had duty to support his family, and such duty is one of the highest obligations in the social order. Fischer v. Fischer (1953) 93 A.2d 788, 24 N.J.Super. 180, rev on other grounds 98 A.2d 568, 13 N.J. 162.

The death of either the husband or the wife terminates the husband's obligation to support the wife. Modell v. Modell (1953) 92 A.2d 505, 23 N.J.Super. AD 60.

The obligation and duty of husband to support and maintain wife are creatures of common law resting on and growing out of contract of marriage and are enforceable by courts of equity. Wood v. Wood (1953) 61 So.2d 436, 258 Ala. 72.

Support furnished by husband is required to be sufficient to maintain wife according to her reasonable necessities, taking into consideration manner in which she was accustomed to living and husband's ability to provide support. Miller v. Miller (Mo.App.1951) 241 S.W.2d 805.

§ 26-21-040. Extradition or Surrender of Obligor.

Though rights of an individual, who is sought to be extradited, are to be protected against illegal action, rights of States and of society to protect themselves against criminals are no less exigent. Ex parte Anthony (1939) 198 Wn.106, 87 P.2d 302.

Constitutional provision relating to fugitives from justice may be regarded as compact between States, faithful and vigorous observance of which will promote general welfare and tend to maintain harmonious relations. Id.

§ 26-21-060. Duty of Support; Which Law Applies; Presumption of Presence in Responding State.

Where action for support of child was filed in California court, which certified case to Oklahoma District Court under Uniform Reciprocal Enforcement of Support Act, 12 O.S.Supp. § 1600.21, was applicable and would be enforced. Green v. Green (Okl 1957) 309 P.2d 276.

Where wife had obtained divorce in Volusia County, Florida, but later became a resident of Connecticut and brought proceedings under Connecticut law and Fla.Stat.Ann. § 88.011 et seq., which by its terms was designed to provide a remedy entirely separate from and independent of any remedy existing under other applicable provisions of law, the circuit court of Duval County, the place of ex-husband's residence had jurisdiction of the proceedings and could enforce the duty of support decreed in the divorce proceedings by a sister county. Thompson v. Thompson (Fla. 1957) 93 So.2d 90.

Where complaint was filed by wife in Kentucky under Ky.Rev.Stat 407.010 et seq., as initiating State, and was certified and transferred to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., and husband was present at all times in New Jersey, it was the New Jersey law which was applicable on question of support for children. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

N.J.Stat.Ann. 2A:4-30.1 et seq., is not restricted to proceedings against an absconding husband or father who has fled State, and New Jersey court has jurisdiction where husband or father is present in State and children or wife are present in another State and father has duty to support. Daly v. Daly (1956) 120 A.2d 510, 39 N.J. Super.117, aff'd 123 A.2d N.J. 599.

§ 26-21-080. Support and Arrearages Enforceable by Action; Jurisdiction.

There is no authorization for entry of order to make payments for temporary support of dependents pending hearing on petition, under Uniform Reciprocal Enforcement of Support Act. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

Failure of wife's petition, in proceeding for support, to allege that she was in need of support did not render petition subject to dismissal. Rivera v. Rivera (1957) 160 N.Y.S.2d 171, 5 Misc.2d 362.

Jurisdiction of juvenile and domestic relations court of cases within N.J.Stat.Ann. 2A:4-30.1 et seq., is more comprehensive and goes beyond that conferred by statutory provisions governing direct proceedings for support, and is not circumscribed by statutory restrictions on jurisdiction in direct proceedings. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super.117, aff'd 123 A.2d 3, 21 N.J. 599.

Although a wife may be seeking a termination of marriage contract, she, unless barred by her conduct, is entitled to support up to the time when a divorce decree is actually entered and in the meantime, she may enforce her right to support in the municipal court of Philadelphia, or in the Common Pleas Court on an application there for alimony pendente lite. Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

Proceedings pursuant to McKinney's Unconsol. Laws, § 2115, subd. (a) are maintainable where petitioner and respondent each reside or are domiciled or found in the same State. Hansen v. Hansen (1955) 142 N.Y.S.2d 248, 207 Misc. 589.

The Commonwealth, at the relation of a wife entitled to support, is a proper plaintiff in an action for support in Pennsylvania Court of Quarter Sessions. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 ALR.2d 761.

Where Maryland resident, whose children were domiciled in Delaware, was prosecuted under Code 1951, art. 27, § 96(b), imposing penalty for nonsupport of minor children regardless of presence of residence of children, Code 1951, art. 89C, §§ 1-21, did not provide remedy to exclusion of criminal prosecution. State v. James (1954) 100 A.2d 12, 203 Md. 113.

Inclusion of attorney's fees and costs in judgment based on action under Ark.Stats. §§ 34.2401 to 34.2418, would not invalidate the proceedings. Dean v. Dodge (1952) 250 S.W.2d 731, 220 Ark. 853.

Where wife in Arkansas instituted action against husband residing in Pennsylvania under Ark.Stats. §§ 34.2401 to 34.2418, written motion and petition for continuance entered by defendant constituted personal appearance. Id.

§ 26-21-090. Petition; Contents.

There is no authorization for entry of order to make payments for temporary support of dependents pending hearing on petition, under Uniform Reciprocal Enforcement of Support Act. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

Petition entitled "complaint for support . . ." under Code 1951, art. 89C, § 1 et seq., and docketed as a law case on law docket of circuit court, would be remanded for the removal of the case from the law to the equity court. Commonwealth of Pennsylvania v. Warren (1954) 105 A.2d 488, 204 Md. 467.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, overruling of ground of plea of abatement to effect that public defender who verified wife's petition was wife's personal attorney was

not error where it did not affirmatively appear from record that such individual verified petition in capacity of personal attorney rather than as public defender. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In nonsupport action by divorced wife against former husband which originated in Connecticut but was transferred to Georgia, overruling of special demurrer to petition which failed to set out laws of Connecticut so that it could be determined whether under Connecticut law. Connecticut would be required to assume jurisdiction over similar actions instituted in Georgia against parties in Connecticut, was error. Id.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, sufficiency of petition as against husband's objections must be determined under Georgia L. 1951, p. 107, § 1 et seq., and not under Connecticut Gen. St.1951, § 1395b et seq. Id.

§ 26-21-100. Findings of Court; Certificate; Transmittal.

Hearing on petition under Uniform Reciprocal Enforcement of Support Act is contemplated prior to entry of any order for payment of support money. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

Even though, according to testimony of defendant's wife, defendant's abandonment of his wife and children occurred in Maryland, it would be for courts of New Jersey, to which wife and the children had moved, to say whether such abandonment was persisted in so as to render defendant guilty of wilfull neglect of his children in New Jersey, and guilt or innocence of accused could not be determined in an extradition proceeding in Pennsylvania. Com. ex rel. Houser v. Seip (1956) 124 A.2d 110, 385 Pa. 545.

Where mother applied for an order directing father to make payments for support of the two children of the marriage, and record did not show with whom or where the children were residing, further hearing to develop these essential facts would be ordered. Wohlfarth v. Wohlfarth (1955) 146 N.Y.S.2d 490, 1 A.D.2d 658, appeal den. 149 N.Y.S.2d 267, 1 A.D.2d 804.

Civil proceeding for support under West's Ann. Code Civ. Proc. § 1650 et seq., must be initiated by the person to whom a duty of support is owed in State where such dependent resides and not by the person owing a duty of support in State in which he resides. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Where wife instituted proceeding under Ark.Stats. § 34.2401 et seq. in Arkansas against divorced husband who resided in North Carolina, and hearing was held before superior court in North Carolina under G.S. § 52A1 et seq., rights of parties were determinable in superior court in North Carolina, and cause was required to conform to North Carolina law. Mahan v. Read (1954) 83 S.E.2d 706, 240 N.C. 641.

Where Georgia trial court had jurisdiction over former husband and assumed jurisdiction on certificate of judge in Connecticut where nonsupport action by divorced wife against former husband was originated, failure of Connecticut judge to name specifically a court in Georgia in his certificate did not render proceedings in Georgia nugatory. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In proceedings brought by wife to require husband to support child, wherein respondent denied child was child of marriage, court was required to determine legitimacy of child. In re Miller (Child.Ct.1952) 114 N.Y.S.2d 304.

A petition under Uniform Support of Dependents Law against husband residing in California would lie in New York City domestic relations court, since the Code Civ. Proc. §§ 1650-1681 adopted by State of California was similar to McKinney's Unconsol. Laws §§ 2111 to 2120. Hodges v. Hodges (1951) 108 N.Y.S.2d 286, 202 Misc. 71.

§26-21-110. Duties of Court, Responding; Depositions.

There is no authorization for entry of order to make payments for temporary support of dependents pending hearing on petition, under Uniform Reciprocal Enforcement of Support Act. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

Where, in wife's proceeding under Ky.Rev.Stat. 407.010 et seq., trial court, after wife's deposition was taken in Kentucky, advised husband that such deposition had been taken, and afforded opportunity to cross-examine in Kentucky or to submit interrogatories, but husband failed to take such action, he waived his right to object to use of deposition on account of his not having been notified of its taking and waived his right to cross-examine. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 NJ 599.

In proceeding initiated in California court and transmitted to Louisiana family court under civil enforcement section of LSA-R.S. 13:1641 et seq., testimony of plaintiff alone given by her during hearing before California court, at which defendant was not cited to appear and hence had no opportunity for cross-examination, amounted to nothing more than an inadmissible ex parte statement and was insufficient to sustain judgment condemning defendant to pay child support. Carpenter v. Carpenter (1956) 92 So.2d 393, 231 La. 638.

Where children of parents divorced in Wyoming were removed to Colorado and parents and children had previously lived in New York where husband secured a decree of judicial separation, New York courts owed more to the decrees of the Colorado court than merely the negative duty of giving it full faith and credit, but were required to undertake the affirmative and reciprocal duty to implement its enforcement within New York and were bound, on formal request of Colorado in a proper case, to do so. Guyette v. Haley (1955) 144 NYS.2d 493, 286 App.Div. 451.

Where wife filed a petition under Florida Uniform Support of Dependents Law Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 Pa.Stat. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

Where wife in Florida filed a petition under Florida Uniform Support of Dependents Law Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 Pa.Stat. § 2043.1 et seq., Court of Quarter Sessions had jurisdiction. Id.

§ 26-21-120. Order To Support; Enforcement Against Property; Enforcement in Counties Other than Where Order Issued.

There is no authorization for entry of order to make payments for temporary support of dependents pending hearing on petition, under Uniform Reciprocal Enforcement of Support Act. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

Where husband and wife, who lived in New Jersey, had marital difficulties because of alleged excessive drinking of husband, and wife took the children to the home of her parents in Kentucky, and wife filed a verified complaint under Ky.Rev.Stat. 407.010 et seq., and the complaint was certified and transmitted to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., New Jersey court could enter an order requiring husband to provide for the support of the children in Kentucky without offending the Constitution or public policy of New Jersey. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

Where complaint was filed by wife in Kentucky under Ky.Rev.Stat. 407.010 et seq., as initiating State, and was certified and transferred to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., and husband was present at all times in New Jersey, the application of New Jersey law to the duty of the husband to support his children in Kentucky did not run counter to the rule that no State shall directly enforce a duty to support created by the law of another State. Id.

Support decree entered by Ohio court which had jurisdiction over person of husband, could not be terminated by Florida court in divorce proceeding instituted by husband upon substituted service, and therefore superior court of California had jurisdiction, based on personal service of process upon husband, to make a reasonable order for support of former wife in a proceeding under West's Ann. Code Civ. Proc., § 1650 et seq. Gohdes v. Gohdes (1955) 286 P.2d 539, 134 C.A.2d 819.

Support order entered in desertion and nonsupport proceedings should not have been made retroactive. Com. ex rel. Kenny v. Kenny (1951) 82 A.2d 552, 169 Pa.Super. 152.

§ 26-21-140. Orders; Enforcement; Particular Powers.

Motion to quash writ of certiorari on ground that relator had plain, speedy and adequate remedy at law was denied, where order to be reviewed by writ required relator to make payments into court for disbursement to probation department of foreign State for support of his minor children, since practical and procedural difficulties with which relator would be confronted in obtaining relief under these circumstances, should it be determined payments involved were wrongfully made, constitutionally sufficient showing that his remedy by appeal was inadequate. Passmore v. Passmore (1961) 157 Wash.Dec. 665, 359 P.2d 811.

There is no authorization for entry of order to make payments for temporary support of dependents pending hearing on petition, under Uniform Reciprocal Enforcement of Support Act. Id.

Where the proceedings under West's Ann. Code Civ. Proc., § 1650 et seq., and McKinney's Unconsol. Laws, § 2111 et seq., are both held in the civil courts, and the only penalty for the failure to comply with the court's orders is punishment for contempt, McKinney's Unconsol. Laws, § 2111 et seq., providing for enforcement of West's Ann.

Code Civ. Proc., § 1650 et seq., does not inhibit in any way the constitutional safeguards erected to assure due process to one charged with crime. Landes v. Landes (1956) 135 N.E.2d 562, 1 N.Y.2d 358.

Support of dependents, obtained through judicial compulsion, is not ordered on unilateral appraisal of husband's income and assets but on showing of need, even during marriage, and amount is fixed having due regard to the party's means and circumstances. Phillips v. Phillips (1956) 150 N.Y.S.2d 646, 1 A.D.2d 393.

Where wife filed a petition under Florida Uniform Support of Dependents Law, Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida circuit court transmitted proceeding to Court of Quarter Sessions of Lehigh County, Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 Pa.Stat. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

While full faith and credit clause of U.S.C.A.Const. art. 4, § 1, does not obligate courts of one State to enforce a final decree of another State for separate maintenance with respect to future payments, under Code Civ. Proc. § 1650 et seq., and general principles of comity, California superior court could by its discretion issue an order requiring husband to make weekly payments for support of wife in accordance with New Jersey separate maintenance decree until modification of such decree by court of competent jurisdiction. Worthley v. Worthley (1954) 267 P.2d 23, vacated on other grounds 283 P.2d 19, 44 C.2d 465.

Authority for court to require defendant to furnish bond contained in civil enforcement sections of LSA-R.S. 13:1641 et seq., is granted to provide additional means of securing performance by defaulting parents of their obligations, and requirement of bond does not transform such proceeding into criminal prosecution. Freeman v. Freeman (1954) 76 So.2d 414, 226 La 410.

In proceeding under civil enforcement sections of LSA-R.S. 13:1641 et seq., wherein rule issued to compel respondent to show why he should not be compelled to provide support for his children, action of trial court in judging him guilty of contempt was not responsive to rule issued. Id.

Where Texas court entered contempt judgment, which ordered relator confined in jail until he paid, among other things, $500 attorney's fee taxed as costs, attorney's fee was but part of procedural remedy for enforcing substantive rights arising from California court's order requiring relator to make certain support payments for benefit of his two children, and fee allowed, as well as other costs of proceeding, was incidental to and part of payments necessary for support to minors and, therefore, was properly allowed. Ex parte Helms (1953) 259 S.W.2d 184, 152 Tex. 480.

§ 26-21-170. Evidence; Spouse as Witness.

The privilege of one spouse against having the other testify against him covers acts before marriage but ceases upon divorce or death, but the privilege against having the spouse testify as to confidential communications applies to all actually successful confidential communications made between spouses while they are husband and wife. State v. Thorne (1953) 43 Wn.2d 47, 260 P.2d 331.

The term "communication", within meaning of privileged communications rule, embraces all facts which have come to one spouse's knowledge or under his or her observation in consequence or by reason of confidence of marital relation, and which, but for confidence growing out of it, would not have been known. State v. Americk (1953) 42 Wn.2d 504, 256 P.2d 278.

The term "communication" within meaning of privileged communication rule, as to husband and wife, should be given a liberal construction and is not confined to mere audible communications or conversations between the spouses, but embraces all facts which have come to his or her knowledge or under his or her observation in consequence or by reason of confidence of marital relation, and which, but for confidence growing out of it, would not have been known. State v. Robbins (1950) 35 Wn.2d 389, 213 P.2d 310.

Basis of immunity given to communications between husband and wife is protection of marital confidences, regarded as so essential to preservation of marriage relationship as to outweigh disadvantages to administration of justice which privilege entails. Wolfe v. U.S. (1934) 54 S.Ct. 279, 291 U.S. 7, 78 L.Ed. 617.

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§ 48-9-1. Purposes of Article.

The purposes of this article are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

Cases

In general.

Cited in Hartley v. Ungvari, 318 S.E.2d 634 (W.Va., 1984).

Finality of foreign decree.

An order for child support rendered in a foreign State pursuant to a final divorce decree obtained in a court of that State possesses the requisite finality to be entitled to full faith and credit in the proper court of this State and is entitled to be enforced as a foreign judgment, even though a statute of the State where the divorce was granted provides that said order may be altered, repealed, suspended, increased or amended and the amount of any arrearages may be reduced or remitted as the case may warrant. Hill v. Hill, 153 W.Va. 392, 168 S.E.2d 803(1969).

Jurisdiction of action to recover arrearages.

General jurisdiction over all matters at law, where the amount exceeds fifty dollars, being conferred upon the circuit court by W.Va. Const., art. VIII, § 12, such court has jurisdiction to hear and determine an action to recover arrearages payable under a foreign judgment providing for support. Hill v. Hill, 153 W.Va.392, 168 S.E.2d 803 (1969).

§ 48-9-2. Definitions.

As used in this article unless the context requires otherwise:

(1) "COURT" means the criminal, intermediate or circuit court, or any other court of record having jurisdiction in this State and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

(2) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past-due and unpaid.

(3) "GOVERNOR" includes any person performing the functions of governor or the executive authority of any State covered by this article.

(4) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(5) "LAW" includes both common and statutory law.

(6) "OBLIGEE" means a person including a State or political subdividion to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "REGISTER" means to record in the Registry of Foreign Support Orders.

(10) "COURT" means any court of this State in which a support order of a rendering State is registered.

(11) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(12) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(13) "STATE" includes a State, territory or possessions of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(14) "SUPPORT ORDER" means any judgment, decree or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-3. Remedies Cumulative.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

Cases

Stated in Hill v. Hill, 153 W.Va. 392, 168 S.E.2d 803 (1969).

§ 48-9-4. Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under § 48-9-7, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-5. Interstate Rendition.

The Governor of this State may:

(1) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(2) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this article apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not State or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (1953, ch. 73; 1972, ch. 342.)

§ 48-9-6. Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to satisfy him that at least sixty days prior thereto the obligee initiated proceedings for support under this article or that any proceeding would be of no avail.

(b) If, under a substantially similar reciprocal law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (1972, ch. 46.)

§ 48-9-7. Law Governing Duty of Support; Presumption as to Presence of Obligor.

Duties of support applicable under this article are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-8. Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this article as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

Cases

Stated in State ex rel. State Dept. of Welfare v. Smith, 275 S.E.2d 918 (W.Va., 1981).

§ 48-9-9. How Duties of Support Enforced.

All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this article including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-10. Jurisdiction.

Jurisdiction of any proceeding under this article is vested in courts of record.

HISTORY: (1972, ch. 46.)

§ 48-9-11. Contents and Filing of Petition for Support; Venue.

(a) The petition or complaint shall be verified and shall State the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition or complaint any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

(b) The petition or complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition or complaint on the ground that it should be filed with some other court of this or

any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-12. Prosecuting Attorney To Represent Obligee.

If this State is acting as an initiating State the prosecuting attorney, upon the request of the court or the State department of welfare, shall represent the obligee in any proceeding under this article.

HISTORY: (1972, ch. 46.)

§ 48-9-13. Petition for a Minor.

A petition or complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (1972, ch. 46.)

§ 48-9-14. Duty of Initiating Court.

If the initiating court finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition or complaint and its certificate and one copy of this article to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-15. Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee, but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (1972, ch. 46.)

Cases

Cited in Peters v. Narick, 270 S.E.2d 760 (W.Va., 1980).

§ 48-9-16. Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(1) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (1972, ch. 46.)

§ 48-9-17. State Information Agency.

(a) The office of the Attorney General is designated as the State Information Agency under this article. It shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this article and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature, the agency shall distribute copies of any amendments to this article and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this article; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices, both State and Federal, where such offices are able to cooperate, and requests made to the Social Security Administration as permitted by the Social Security Act, as amended.

HISTORY: (1972, ch. 46.)

§ 48-9-18. Duty of Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition or complaint, certificate and act from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-19. Further Duties of Court and Officials in Responding State.

(a) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or complaint or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition or complaint from the initiating court.

(b) If the obligor or his property is not found in the county, and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon, the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this article apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court, he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (1972, ch. 46.)

§ 48-9-20. Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court shall upon request of either party, continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (1972, ch. 46.)

§ 48-9-21. Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this article. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-22. Rules of Evidence.

In any hearing for the civil enforcement of this article, the court is governed by the rules of evidence applicable in a civil action in a court of record. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (1972, ch. 46.)

§ 48-9-23. Order of Support.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this article shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (1953, ch. 73; 1967, ch. 53; 1972, ch. 46.)

§ 48-9-24. Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-25. Additional Powers of Responding Court.

In addition to the foregoing powers, a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(3) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-26. Adjudication of Issue of Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (1972, ch. 46.)

§ 48-9-27. Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(1) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-28. Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (1953, ch. 73; 1972, ch. 46.)

§ 48-9-29. Proceedings Not To Be Stayed Because of Pending or Prior Action; Support Order Pendente Lite.

A responding court shall not stay the proceeding or refuse a hearing under this article because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require

the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition or complaint being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (1972, ch. 46.)

§ 48-9-30. Effect of Support Order Made Under Another Law or by Court of Another State.

A support order made by a court of this State pursuant to this article does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (1972, ch. 46.)

§ 48-9-31. Effect of Participation in Proceeding.

Participation in any proceeding under this article does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

HISTORY: (1972, ch. 46.)

§ 48-9-32. Application of Article Where Obligee and Obligor Are in Different Counties in this State.

This article applies if both the obligee and the obligor are in this State but in different counties. If the court of the county in which the petition or complaint is filed finds that the petition or complaint sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition or complaint and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county in which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

HISTORY: (1972, ch. 46.)

§ 48-9-33. Appeals.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(a) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State, or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (1972, ch. 46.)

§ 48-9-34. Additional Remedies for Enforcement of Foreign Support Order.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in §§ 48-9-35 to 48-9-39 of this article.

HISTORY: (1972, ch. 46.)

§ 48-9-35. Registration of Foreign Support Order.

The obligee may register the foreign support order in a court of this State in the manner, with the effect, and for the purposes herein provided.

HISTORY: (1972, ch. 46.)

§ 48-9-36. Clerk To Maintain Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

HISTORY: (1972, ch. 46.)

§ 48-9-37. Prosecuting Attorney To Represent Obligee.

If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court or the State Department of Welfare shall represent the obligee in proceedings under §§ 48-9-34 to 48-9-39 of this article.

HISTORY: (1972, ch. 46.)

§ 48-9-38. Registration Procedure; Notice; Prosecuting Attorney To Enforce Order.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court (1) three certified copies of the order with all modifications thereof, (2) one copy of the reciprocal enforcement of support law of the State in which the order was made, and (3) a statement verified and signed by the obligee,

showing the post office address of the obligee, the last known place of residence and post office address of the obligor, amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this article.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (1972, ch. 46.)

§ 48-9-39. Effect of Registration; Enforcement Procedure.

(a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (1972, ch. 46.)

§ 48-9-40. Uniformity of Interpretation.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact a substantially similar law.

HISTORY: (1972, ch. 46.)

§ 48-9-41. Short Title.

This article may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act."

HISTORY: (1972, ch. 46.)

§ 48-9-42. Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end the provisions of this article are severable.

HISTORY: (1972, ch. 46.)

Cases

Cited in Hartley v. Ungvari, 318 S.E.2d 634 (W.Va., 1984).

WISCONSIN
WIS. STAT. ANN. §§ 767.65(1) to 767.65(42)

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WISCONSIN

WIS. STAT. ANN. §§ 767.65(1) to 767.65(42)

Revised Uniform Reciprocal Enforcement of Support Act (1968)

§ 767.65(1). Purposes.

The purposes of this section are to improve and extend by reciprocal legislation the enforcement of duties of support.

§ 767.65(2). Definitions.

(a) "COURT" means the court assigned to exercise jurisdiction under this chapter to enforce support and, when the context requires, means the court or agency of any other State as defined in a substantially similar reciprocal law.

(am) "DISTRICT ATTORNEY," as used in this section, means either the District Attorney or, when authorized by county board resolution to conduct the duties of the District Attorney under this section, the corporation counsel.

(b) "DUTY OF SUPPORT" means a duty of support whether imposed or imposable by law or by order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(c) "GOVERNOR" includes any person performing the functions of Governor or the executive authority of any State covered by this section.

(d) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced.

(e) "LAW" includes both common and statutory law.

(f) "OBLIGEE" means a person including a State or political subdivision to whom a duty of support is owed or a person including a State or political subdivision that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(g) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(i) "REGISTER" means to file in the Registry of Foreign Support Orders.

(j) "REGISTERING COURT" means any court of this State in which a support order of a rendering state is registered.

(k) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State.

(kz) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced.

(m) "STATE" includes a State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized elected tribal governing body, and any foreign jurisdiction in which this or substantially similar reciprocal law is in effect or which has established enforcement procedures with or without court participation under a treaty, the application of which extends to this State.

(n) "SUPPORT ORDER" means any judgment, decree, or order of support in favor of an obligee whether temporary or final, or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

§ 767.65(3). Remedies Additional to Those Now Existing.

The remedies provided in this section are in addition to, and not in substitution for, any other remedies.

§ 767.65(4). Extent of Duties of Support.

Duties of support arising under the law of this State, when applicable under sub. (7), bind the obligor present in this State regardless of the presence or residence of the obligee.

§ 767.65(5). Interstate Rendition.

The Governor of this State may:

(a) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(b) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this section apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, the oath and any proceedings for extradition pursuant to this subsection need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

§ 767.65(6). Conditions of Interstate Rendition.

(a) Before making the demand upon the Governor of another State for the surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any District Attorney of this State to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this section or that any proceeding would be of no avail.

(b) If, under a substantially similar law, the Governor of another State makes a demand upon the Governor of this State for the surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any District Attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

§ 767.65(7). Choice of Law.

Duties of support applicable under this section are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

§ 767.65(8). Remedies of State or Political Subdivision Furnishing Support.

If a State or a political subdivision furnishes support to an individual obligee it has the same right to initiate a proceeding under this section as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

§ 767.65(9). How Duties of Support Enforced.

All duties of support including the duty to pay arrearages, are enforceable by a proceeding under this section including a proceeding for contempt of court. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obiligor.

§ 767.65(10). Jurisdiction.

Jurisdiction of any proceeding under this section is vested in the court defined in subd. (2)(a).

§ 767.65(11). Contents and Filing of Petition for Support; Venue.

(a) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints and his Social Security number.

(b) The petition may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

§ 767.65(12). Official To Represent Obligee.

If this State is acting as an initiating State the District Attorney upon the request of the court or the person in charge of county welfare activities shall represent the obligee in any proceeding under this section. If the District Attorney neglects or refuses to represent the obligee, the Department of Justice may undertake the representation.

§ 767.65(13). Petition for a Minor.

A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

§ 767.65(14). Duty of Initiating Court.

If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property it shall so certify and cause 3 copies of the petition and its certificate and one copy of this section to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the responding courts is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State, with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

§ 767.65(15). Costs and Fees.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect only those fees and costs from the obligor which are incurred in the responding State. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor, be paid in whole or in part by the obligor, the county or the federally recognized elected tribal governing body. These costs or fees except for the receiving and disbursing fee authorized by § 814.61(12)(b) do not have priority over amounts due the obligee.

§ 767.65(16). Jurisdiction by Arrest.

If the court of this State believes that the obligor may flee it may:

(a) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(b) As a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

§ 767.65(17). State Information Agency.

(a) The Department of Health and Social Services is designated as the State Information Agency under this section, and shall:

(1) Compile a list of the courts and their addresses in this State having jurisdiction under this section and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar law. Upon adjournment of each session of the legislature the agency shall distribute copies of any amendments to this section and a statement of their effective date to all other State Information Agencies;

(2) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this section; and

(3) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the laws it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources such as telephone directories, real property records, vital statistics records, police records, request for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both State and Federal where such offices are able to cooperate, and request made to the Social Security Administration as permitted by the Social Security Act, as amended.

(c) After the deposit of 3 copies of the petition and certificate and one copy of the law of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the District Attorney is not prosecuting the case diligently, the Department of Justice may undertake the representation.

§ 767.65(18). Duty of the Court and Officials of this State as Responding State.

(a) After the responding court receives copies of the petition, certificate and law from the initiating court, the clerk of the court shall docket the case and notify the District Attorney of his action.

(b) The District Attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the District Attorney neglects or refuses to represent the obligee, the Department of Justice may undertake the representation.

§ 767.65(19). Further Duties of Court and Officials in the Responding State.

(a) The District Attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction the District Attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(b) If the obligor or his property is not found in the county, and the District Attorney discovers that the obligor or his property may be found in another county of this State or in another State he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this section apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the District Attorney has no information as to the location of the obligor or his property he shall so inform the initiating court.

§ 767.65(20). Hearing and Continuance.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense the court, upon request of either party, shall continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

§ 767.65(21). Immunity from Criminal Prosecution.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

§ 767.65(22). Evidence of Husband and Wife.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this section. Husband and wife are

competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

§ 767.65(23). Rules of Evidence.

In any hearing for the civil enforcement of this section the court is governed by the rules of evidence applicable in a civil court action. If the action is based on a support order issued by another court a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity under subd. (27) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

§ 767.65(24). Order of Support.

If the responding court finds a duty of support it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this section shall require that payments be made to the clerk of the court of the responding State. The court and District Attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the District Attorney shall send a certified copy of the order to the District Attorney of any county in which it appears that proceedings to enforce the order would be as have those of the county in which it was first issued. The District Attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order. The enforcement may proceed as provided in subds. (37) to (40).

§ 767.65(25). Responding Court To Transmit Copies to Initiating Court.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

§ 767.65(26). Additional Powers of Responding Court.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(a) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(b) Require the obligor to report personally and to make payments at specified intervals to the clerk fo the court; and

(c) Punish under the power of contempt the obligor who violates any order of the court.

§ 767.65(27). Paternity.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

§ 767.65(28). Additional Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(a) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(b) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

§ 767.65(29). Additional Duty of Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

§ 767.65(30). Proceedings Not To Be Stayed.

A responding court shall not stay the proceeding or refuse a hearing under this section because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgement therein provides for the support demanded in the petition being heard the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

§ 767.65(31). Application of Payments.

A support order made by a court of this State pursuant to this section does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

§ 767.65(32). Effect of Participation in Proceeding.

Participation in any proceeding under this section does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

§ 767.65(33). Intrastate Application.

This section applies if both the obligee and the obligor are in this State but one or both are in the jurisdiction of a federally recognized elected tribal governing body or the 2 are in different counties. If the court of the tribal jurisdiction or the circuit court for the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another tribal jurisdiction or the circuit court for another county in this State may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the tribal jurisdiction or the circuit court for the county in which the obligor or his property is found. The clerk of the court receiving these documents shall notify the District Attorney or the tribal attorney of their receipt. The attorney and the court to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this State as a responding State.

Cases

In general.

Where State other than Wisconsin could properly give custody of children to nonresident mother, duty of support could be imposed upon father who had been awarded legal custody; thus, circuit court had authority to determine whether Wisconsin father with legal but not physical custody of his children could be required to pay child support to mother residing in Louisiana with children. State of La. ex rel. Eaton v. Leis, 354 N.W.2d 209 (Wis.App., 1984).

§ 767.65(34). Appeals.

If the Department of Justice is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, it may:

(a) Perfect an appeal to the Court of Appeals if the support order was issued by a court of this State; or

(b) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for the Department of Justice.

§ 767.65(35). Additional Remedies.

If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in subds. (36) to (40).

§ 767.65(36). Registration.

The obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

§ 767.65(37). Registry of Foreign Support Orders.

The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

§ 767.65(38). Official to Represent Obligee.

(a) If this State is acting either as a rendering or a registering State the District Attorney upon the request of the court shall represent the obligee in proceedings under subds. (36) to (40).

(b) If the District Attorney neglects or refuses to represent the obligee, the Department of Justice may undertake the representation.

§ 767.65(39). Registration Procedure; Notice.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court: 1) 3 certified copies of the order with all modifications thereof, 2) one copy of the reciprocal enforcement of support act of the State in which the order was made and 3) a statement verified and signed by the obligee, showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this section.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the District Attorney of his action. The District Attorney shall proceed diligently to enforce the order.

§ 767.65(40). Effect of Registration; Enforcement Procedure.

(a) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If he shows to the court any ground upon which enforcement of a support order of this State may be stayed the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

§ 767.65(41). Uniformity of Interpretation.

This section shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 767.65(42). Short Title.

This section may be cited as the Revised Uniform Reciprocal Enforcement of Support Act (1968).

Cases

In general.

Revised Uniform Reciprocal Enforcement of Support Act must be construed to effectuate its general purpose to make uniform the laws of those States which enact it. Monson v. Monson (1978) 271 N.W.2d 137, 85 Wis.2d 794.

An obligor may request retroactive as well as propective modification of a support order at any time after it has been registered in Wisconsin under the Revised Uniform Reciprocal Enforcement of Support Act, St. 1977, § 52.10; modification is not required to be requested within the 20-day statutory period in which an obligor may move, after registration, to vacate the registration or for further relief. Id.

Motion to dismiss proceedings brought by divorced wife to enforce Minnesota child support order, which was registered in Wisconsin, should have been denied in view of former husband's motion for modification; wife's inconvenience of having to defend an attempt to modify her rights was insufficient to permit her to dismiss her proceeding. Id.

Decisions in other States.

Proper jurisdiciton, both over the subject matter and of the person, was obtained by the District Court of McKinley County, New Mexico, when the defendant, a Zuni Indian whose wife filed a complaint in Wisconsin District Court in accordance with that State's Uniform Reciprocal Enforcement of Support Act asking that defendant be ordered to pay a sum as directed by the New Mexico District Court as support for their child, appeared before the McKinley County District Court. Natewa v. Natewa (1972) 499 P.2d 691, 84 N.M. 69.

Courts of the State of New Mexico have authority to exercise jurisdiction over child support actions against tribal members residing on the Zuni Indian Reservation. Id.

In action under Wisconsin Uniform Reciprocal Enforcement of Support Act to recover child support for parties' alleged minor children, evidence failed to establish that defendant had cohabited with plaintiff during the years the children were born and thus there was no evidence of a vital fact necessary to establish parenthood, despite defendant's admission of cohabitation. Guerra v. DeLuna (Texas Civ.App.1975) 526 S.W.2d 225.

Jurisdiction.

California court, which issued child support order, had subject-matter jurisdiction, had personal jurisdiction over mother and child, who resided in California for several years immediately prior to date of the order, and had personal jurisdiction over father, who appeared and participated in the proceeding through counsel, and, thus, court had jurisdiction to issue such order. State ex rel. Hubbard v. Hubbard (1983) 329 N.W.2d 202, 110 Wis.2d 683.

Defenses or counterclaims.

Matters relating to custody, visitation, or a custodial parent's contempt of court could not be raised as defenses or counterclaims in action for child support under Uniform Reciprocal Enforcement of Support Act. State ex rel. Hubbard v. Hubbard (1983) 329 N.W.2d 202, 110 Wis.2d 683.

Cases Under Prior Statute

In general.

Requisition may be granted for return to this State of father charged with crime of abandonment of child under this section, where such father has been divorced from mother and where father is charged in divorce decree with payment to mother of certain sum for support of child. 15 Op.Atty.Gen. 26 (1926).

Violations of St.1921, §§ 4587, 4587c were extraditable offenses. 11 Op.Atty.Gen. 450 (1922).

Governor was authorized to issue requisition upon executive authority of another State for return to this State of person charged with abandonment in this State, although he might not have been in State at time of commission of offense. 8 Op.Atty.Gen. 789 (1919).

The failure of a husband to pay alimony to his former wife as required by a decree of divorce did not constitute an offense under St.1917, § 4587c, and requisition for his return from another State would not lie. 7 Op.Atty.Gen. 198 (1918).

Offense of desertion of wife or child was a crime and offender could be extradited. 1906 Op.Atty.Gen. 520.

Decisions in other States

For additional Notes of Decisions in other States to similar sections of Uniform Reciprocal Enforcement of Support Act, see, also, 9A Uniform Laws Annotated.

In general.

In proceedings commenced pursuant to provisions of West's Ann. Code Civ. Proc. § 1650 et seq., California court must recognize and enforce foreign alimony and support decrees, whether modifiable or not, and must afford defendant opportunity to litigate issue of modification. Worthley v. Worthley (1955) 283 P.2d 19, 44 C.2d 465. Provisions of West's Ann. Code Civ. Proc. § 1650 et seq., were not enacted to make failure to support one's children a crime, and did not create new offenses, but were merely procedural steps that related only to current duty to support, and were therefore not violative of constitutional prohibition against ex post facto laws. Smith v. Smith (1955) 281 P.2d 274, 131 C.A.2d 764.

The purpose of West's Ann. Code Civ. Proc. § 1650 et seq. is to improve and extend by reciprocal legislation the enforcement of duties of support. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

West's Ann. Code Civ. Proc. § 1650 et seq., contemplates two distinct courses of action in the enforcement of support duties, namely, extradition and initiation of civil proceedings in demanding State, with an opportunity thereafter given obligor to submit to subsequently assumed jurisdiction of court in responding State, and while either or both courses of action may be pursued, the election lies wholly with the demanding State and the obligee. Id.

As defined by West's Ann. Code Civ. Proc. § 1653, "obligor" is the person owing a duty of support and "obligee" is the person to whom a duty of support is owed. Id.

Purpose.

By enactment of Code 1951, art. 89c, § 1 et seq., the legislature showed a policy of liberality toward enforcement in Maryland of the claims of nonresident wife and children entitled to support. Zouck v. Zouck (1954) 104 A.2d 573, 204 Md. 285, dissenting opinion 105 A.2d 214.

Purpose of proceedings under 62 Pa.Stat. § 2043.1 et seq., is not to punish husband for his dereliction in failing to support his family, but to secure such allowance for family's support as is reasonable, having in view his ability to pay as evidenced by his property, income, and earning capacity. Com. ex rel. Shaffer v. Shaffer (1953) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761. The Pennsylvania supreme court in holding that the Pennsylvania Reciprocal Enforcement of Support Act was sufficiently similar to the Florida Support of Dependents Law, Fla.Stat.Ann. § 88.01 et seq., to give reciprocal effect to both acts, stated as follows:

> The problem of enforcing duties of support at best has always been difficult enough and in general an arrant husband could avoid the enforcement of his responsibility to support his dependents by the simple expedient of crossing State lines. To meet the problem thus presented two distinct types of statutes were enacted, each of which contemplates a uniform two-State reciprocal procedure for the enforcement of the duty of support. These are the Uniform Support of Dependents Act and the Uniform Reciprocal Enforcement of Support Act.

> The law so approved was adopted by Pennsylvania in the 1951 Act, supra. The Act has also been adopted in 23 other jurisdictions. Proceedings to compel support are maintainable under § 6(4) of the Florida law 'Where the respondent was or is a resident of or domiciled in [Florida] the initiating State and has departed or departs from such State leaving therein a dependent in need of and entitled to support under this act and is believed to be a resident of or domiciled in another State having substantially similar or reciprocal laws.' The Uniform Act adopted in Pennsylvania is to the same effect. The methods of bringing the complaint before the responding State by the initiating State are substantially parallel and both acts in substance provide for reciprocal relief between States which have substantially similar laws.
>
> In an effort to create an effective civil remedy to compel support of an abandoned wife and children by an absconding husband-father found in another State the Uniform Support of Dependents Act was originally enacted by the State of New York on April 25, 1949. McKinney's Unconsolidated Laws of New York, § 2111. Cf. Maxim v. Maxim, 118 N.Y.S.2d 5411. The New York State Act was subsequently enacted in eight other States including Florida, which adopted the law in 1953. The Uniform Reciprocal Enforcement of Support Act was approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association in September 1950.
>
> The word "similar" means "of a like nature or kind," according to the Oxford Dictionary, or 'nearly corresponding; resembling in many respects; somewhat like; having a general likeness' as defined in Websters International Dictionary. Cf. Bonsall's Estate, 288 Pa. 39, 135 A. 724. Identity in language therefore is not essential to reciprocal operation of the two acts with which we are concerned.

Identity in language was not essential to reciprocal operation of the Florida Uniform Support of Dependents Law, Fla.Stat.Ann. § 88.01 et seq., and the Pennsylvania Uniform Enforcement of Support Law 62 P.S. § 2043.1 et seq., both of which are applicable in another State having "similar" laws. Com. ex rel. Shaffer v. Shaffer (1953) 103 A.2d 430, 175 Pa.Super. 100, 43 A.L.R.2d 761.

The Florida Uniform Support of Dependents Law, Fla.Stat.Ann. § 88.01 et seq., and the Pennsylvania Uniform Enforcement of Support Law, 62 Pa.Stat. § 2043.1 et seq., have reciprocal operation, though the Pennsylvania Act has criminal enforcement provisions while the Florida Act does not, and though Florida Act relates to support of wife and children only while Pennsylvania Act deals with support of all dependents. Id.

West's Ann. Code Civ. Proc. § 1650 et seq., was not enacted to make failure to support one's children a crime, and do not create new offenses, but are merely procedural steps that relate only to current duty to support, and are therefore not violative of constitutional prohibition against ex post facto laws. Smith v. Smith (1955) 281 P.2d 274, 131 C.A.2d 764.

West's Ann. Code Civ. Proc. § 1650 et seq. Provides for civil enforcement of support duty through commencement of proceedings by dependent in initiating State, where dependent resides, transmission of required certified documents to court of responding State, in which defendant resides and entry of appropriate order by such court after acquiring jurisdiction of defendant and holding a hearing on support claim, and also provides for criminal enforcement of support duty through extradition process. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Obligor.

As defined by West's Ann. Code Civ. Proc. § 1653, "obligor" is the person owing a duty of support, and "obligee" is the person to whom a duty of support is owed. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Court.

References, in definitions contained in the former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq., to other kinds of courts and other kinds of legal officers are for purpose of describing appropriate courts and legal officers in other States having a similar law; and as far as Kentucky is concerned "court" means a county court or circuit court and "petitioner's representative" means a county attorney. Duncan v. Smith (Ky.1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

Duties of support.

The duty of a father to support his minor children is a duty flowing directly from him to them without regard to any marital dereliction of his wife. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

During marriage a husband is obliged to support his family in accordance with his financial ability, and a wife is not legally obligated to use her independent assets to maintain her husband and children. Phillips v. Phillips (1956) 1 A.D.2d 393, 150 N.Y.S.2d 646.

A husband, in order to defeat his duty to support, must show conduct by his wife that would entitle him to a divorce. Com. v. Williams (1955) 116 A.2d 297, 178 Pa.Super. 313.

Only reasonable cause justifying husband's refusal to support wife is conduct on her part which would be valid ground for a divorce decree. Com. ex rel. Rovner v. Rovner (1955) 111 A.2d 160, 177 Pa.Super. 122. See, also, Com. ex rel. Davidoff v. Davidoff (1955) 115 A.2d 892, 178 Pa.Super. 549.

The obligation and duty of husband to support and maintain wife are creatures of common law resting on and growing out of contract of marriage and are enforceable by courts of equity. Wood v. Wood (1953) 61 So.2d 436, 258 Ala. 72.

Extradition.

The provisions of Code 1940, Title 34, § 109, authorizing extradition of a person for the crime of nonsupport although he was not present in demanding State at time of commission of crime charged and had not fled therefrom are valid and enforceable. Harrison v. State (1955) 77 So.2d 384, cert. den. 77 So.2d 387, 262 Ala. 701.

Father could not avoid extradition from California under West's Ann. Code Civ. Proc. § 1650 et seq. on charge of crime of nonsupport of minor child in Ohio by initiating support proceedings in California under purported authority of R.C. § 3115.01 et seq. and complying with order of California court for support of wife and child in Ohio. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Support Act, which authorizes issuance of rendition warrant for offense charged thereunder, even though person sought to be surrendered was not in demanding State at time of alleged commission of offense charged, is procedural and issuance of rendition warrant, even though offense was allegedly committed prior to effective date of act, was authorized. State ex re. Bryant v. Fleming (1953) 260 S.W.2d 161, 195 Tenn. 419.

In extradition proceedings the Tennessee court must take judicial notice of support statute of demanding State substantially similar to, Code Supp.1950, § 9773.4. Id.

Choice of law.

Where complaint was filed by wife in Kentucky under Ky.Rev.Stat. 407.010 et seq., as initiating State, and was certified and transferred to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., and husband was present at all times in New Jersey, it, was the New Jersey law which was applicable on question of support for children. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

The duties of support under N.J.Stat.Ann. 2A:4-30.1 et seq., are those imposed or imposable under the laws of the State where the obligor was present during the period for which support is sought, and the presumption places on him the burden of going forward with proof that he was not present in the responding State during such period. Id.

Petition.

In suit in Colorado by California county and by mother of child against father under West's Ann. Code Civ. Proc. § 1650 et seq., for reimbursement of funds used in support of the child, evidence was sufficient to prove allegations of complaint. Potter v. Potter (1955) 278 P.2d 1020, 131 Colo. 14.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, overruling of ground of plea of abatement to effect that public defender who verified wife's petition was wife's personal attorney was not error where it did not affirmatively appear from record that such individual verified petition in capacity of personal attorney rather than as public defender. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In nonsupport action by divorced wife against former husband which originated in Connecticut and was transferred to Georgia, sufficiency of petition as against husband's objections must be determined under Georgia L. 1951, p. 107, § 1 et seq., and not under Conn.Gen.Stat.1951, § 1395b et seq. Id.

In nonsupport action by divorced wife against former husband which was originated in Connecticut and transferred to Georgia overruling of special demurrer to petition which failed to show that father was liable under Georgia L. 1951, p. 107, § 1 et seq., for support of minors was error. Id.

Attorney for petitioner.

The practical difficulties involved in the securing of support by one person from a person residing in another State constitute a valid basis for granting free legal representation in such cases and denying it in cases where both persons are residents of the same State, and therefore the former Uniform Support of Dependents Acts, Ky.Rev.Stat. 407.010 et seq., was not unconstitutional for granting privilege of free legal representation to dependent person when person liable to furnish support is in other State even though it denies such privilege when person liable for support is in same State. Duncan v. Smith (1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

Procedure.

Where, in wife's proceeding under Ky.Rev.Stat. 407.010 et seq., trial court, after wife's deposition was taken in Kentucky, advised husband that such deposition had been taken, and afforded opportunity to cross-examine in Kentucky or to submit interrogatories, but husband failed to take such action, he waived his right to object to use of deposition on account of his not having been notified of its taking and waived his right to cross-examine. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599.

Where children of parents divorced in Wyoming were removed to Colorado and parents and children had previously lived in New York where husband secured a decree of judicial separation, New York courts owed more to the decrees of the Colorado court, than merely the negative duty of giving it full faith and credit, but were required to undertake the affirmative and reciprocal duty to implement its enforcement within New York and were bound, on formal request of Colorado in a proper case, to do so. Guyette v. Haley (1955) 144 N.Y.S.2d 493, 286 App.Div. 451.

Where wife filed a petition under Florida Uniform Support of Dependents Law Fla.Stat.Ann. § 88.01 et seq., to compel her husband to support her, and Florida Circuit Court transmitted proceeding to Court of Quarter Sessions of Lehigh County Pennsylvania, where husband was allegedly domiciled, for disposition under the Pennsylvania Uniform Enforcement of Support Law, 62 P.S. § 2043.1 et seq., Court of Quarter Sessions was not chargeable with reversible error in directing that bench warrant issue to compel presence of husband at hearing. Com. ex rel. Shaffer v. Shaffer (1954) 103 A.2d 430, 175 Pa.Super. 100, 42 A.L.R.2d 761.

Civil proceeding for support under West's Ann. Code Civ. Proc. § 1650 et seq., must be initiated by the person to whom a duty of support is owed in State where such dependent resides and not by the person owing a duty of support in State in which he resides. Ex parte Floyd (1954) 273 P.2d 820, 43 C.2d 379.

Where Georgia trial court had jurisdiction over former husband and assumed juirisdiction on certificate of judge in Connecticut where nonsupport action by divorced wife against former husband was originated, failure of Connecticut judge to name specifically a court in Georgia in his certificate did not render proceedings in Georgia nugatory. Manis v. Genest (1953) 77 S.E.2d 525, 210 Ga. 16.

In action by Arkansas wife under Ark.Stats. §§ 34.2401 to 34.2418 in which husband who lived in Pennsylvania entered personal appearance, wife could either proceed to sue on Arkansas judgment in Pennsylvania or could proceed under the terms of 62 P.S. §§ 2043.1 to 2043.19. Dean v. Dodge (1952) 250 S.W. 2d 731, 220 Ark. 853.

Costs.

General statutes governing costs apply to proceedings under former Uniform Support of Dependents Act, Ky.Rev.Stat. 407.010 et seq. Duncan v. Smith (1953) 262 S.W.2d 373, 42 A.L.R.2d 754.

Order.

Where husband and wife, who lived in New Jersey, had marital difficulties because of alleged excessive drinking of husband, and wife took the children to the home of her parents in Kentucky, and wife filed a verfied complaint under Ky.Rev.Stat. 407.010 et seq., and the complaint was certified and transmitted to New Jersey under N.J.Stat.Ann. 2A:4-30.1 et seq., New Jersey court could enter an order requiring husband to provide for the support of the children in Kentucky without offending the Constitution or public policy of New Jersey. Daly v. Daly (1956) 123 A.2d 3, 21 N.J. 599.

Where father is at all times willing to support children in New Jersey, but wife leaves State with children for purpose of obtaining a foreign divorce on grounds probably not adequate for New Jersey divorce, and of using N.J.Stat.Ann. 2A:4-30.1 et seq., to obtain support for children and to avoid necessity of appearing in New Jersey court, and there is no showing that welfare of children is being served by keeping them in foreign State or that children are in need of support, wife should not be granted relief under the act. Daly v. Daly (1956) 120 A.2d 510, 39 N.J.Super. 117, aff'd 123 A.2d 3, 21 N.J. 599.

Where husband's conduct justified wife's removal to her home, with children, and children would not be served by living with husband, and children needed support, wife could maintain proceedings under N.J.Stat.Ann. 2A:4-30.1 et seq. Id.

Where, although wife had been justified in leaving State with children, husband expressed desire to visit children, and it appeared that their welfare might be advanced by permitting visitation rights, order, under N.J.Stat.Ann. 2A:4-30.1 et seq., directing husband to make support payments, was conditioned on wife's permitting husband reasonable visitation rights and custody rights during one month of summer. Id.

Where no appeal was taken from order directing husband to pay weekly amount for support of wife and child order was res judicata as to wife's right to support. Com. ex rel. Cellucci v. Cellucci (1953) 93 A.2d 861, 173 Pa.Super.

Enforcement of order.

Where the proceedings under West's Ann. Code Civ. Proc. § 1650 et seq., and McKinney's Unconsol. Laws, § 2111 et seq., are both held in the civil courts, and the only penalty for the failure to comply with the courts' orders is punishment for contempt, McKinney's Unconsol. Laws, § 2111 et seq., providing for enforcement of West's Ann. Code Civ. Proc. § 1650 et seq., does not inhibit in any way the constitutional safeguards erected to assure due process to one charged with crime. Landes v. Landes (1956) 135 N.E.2d 562, 1 N.Y.2d 358.

Authority for court to require defendant to furnish bond contained in civil enforcement sections of La.Rev.Stat.Ann. 13:1641 et seq., is granted to provide additional means of securing performance by defaulting parents of their obligations, and requirement of bond does not transform such proceeding into criminal prosecution. Freeman v. Freeman (1954) 76 So.2d 414, 226 La. 410.

071

WYOMING
WYO. STAT. ANN. §§ 20-4-101 to 20-4-138

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WYOMING

WYO. STAT. ANN. §§ 20-4-101 to 20-4-138

§ 20-4-101. Purpose.

The purposes of this Act §§ 20-4-101 to 20-4-138 are to improve and extend by reciprocal legislation the enforcement of duties of support.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-102. Definitions.

As used in this Act §§ 20-4-101 to 20-4-138:

(i) "COURT" means the District Court of this State and when the context requires means the court of any other State as defined in a substantially similar reciprocal law;

(ii) "DUTY OF SUPPORT" means a duty of support imposed or imposable by law, order, decree or judgment of any court, whether interlocutory or final or whether incidental to an action for divorce, separation, separate maintenance or otherwise, and includes the duty to pay arrearages of support past due and unpaid;

(iii) "GOVERNOR" means any person performing the functions of Governor or the executive authority of any State covered by this Act;

(iv) "INITIATING STATE" means a State in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "INITIATING COURT" means the court in which a proceeding is commenced;

(v) "LAW" means both common and statutory law;

(vi) "OBLIGEE" means a person, State or political subdivision to whom a duty of support is owed, or that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance;

(vii) "OBLIGOR" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced;

(viii) "PROSECUTING ATTORNEY" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person;

(ix) "REGISTER" means to file in the Registry of Foreign Support Orders;

(x) "REGISTERING COURT" means any court of this State in which a support order of a rendering State is registered;

(xi) "RENDERING STATE" means a State in which the court has issued a support order for which registration is sought or granted in the court of another State;

(xii) "RESPONDING STATE" means a State in which any responsive proceeding pursuant to the proceeding in the initiating State is commenced. "RESPONDING COURT" means the court in which the responsive proceeding is commenced;

(xiii) "STATE" includes a State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect;

(xiv) "SUPPORT ORDER" means any judgment, decree or order of support in favor of an obligee whether temporary or final or subject to modification, revocation or remission, regardless of the kind of action or proceeding in which it is entered.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-103. Remedies Cumulative.

The remedies herein provided are in addition to and not in substitution for any other remedies.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-104. Duties of Support Binding Regardless of Residency.

Duties of support arising under the law of this State, when applicable under Wyo.Stet. 20-4-107, bind the obligor present in this State regardless of the presence or residence of the obligee.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-105. Reciprocal Surrender of Person Failing To Support.

(a) The Governor of this State may:

(i) Demand of the Governor of another State the surrender of a person found in that State who is charged criminally in this State with failing to provide for the support of any person; or

(ii) Surrender on demand by the Governor of another State a person found in this State who is charged criminally in that State with failing to provide for the support of any person.

(b) Provisions for extradition of criminals not inconsistent with this Act §§ 20-4-101 to 20-4-138 apply to the demand even if the person whose surrender is demanded was not in the demanding State at the time of the commission of the crime and has not fled therefrom. The demand, oath and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding State.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, §1.)

§ 20-4-106. Prerequisites To Demand for Surrender of Obligor.

(a) Before making demand upon the Governor of another State for surrender of a person charged criminally in this State with failing to provide for the support of a person, the Governor of this State may require any prosecuting attorney of this State to show that at least sixty (60) days prior thereto the obligee initiated proceedings for support under this Act §§ 20-4-101 to 20-4-138 or that any proceeding would be of no avail.

(b) If, under a substantially similar act, the Governor of another State makes a demand upon the Governor of this State for surrender of a person charged criminally in that State with failure to provide for the support of a person, the Governor may require any prosecuting attorney to investigate the demand and report to him whether proceedings for support have been initiated or would be effective. If it appears to the Governor that a proceeding would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If proceedings have been initiated and the person demanded has prevailed therein, the Governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the Governor may decline to honor the demand if the person demanded is complying with the support order.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-107. Duties of Support; Presumption.

Duties of support are those imposed under the laws of any State where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding State during the period for which support is sought until otherwise shown.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-108. Action for Reimbursement by State Furnishing Support.

If a State or political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this Act §§ 20-4-101 to 20-4-138 as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-109. Proceeding for Enforcement; Limitation on Defense.

All duties of support are enforceable by a proceeding under this Act §§ 20-4-101 to 20-4-138 including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-110. Jurisdiction of Proceeding for Enforcement.

Jurisdiction of any proceeding under this Act §§ 20-4-101 to 20-4-138 is vested in the District Court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-111. Complaint; Contents; Filing.

(a) The complaint shall be verified and shall state the name, and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the complaint any information which may help in locating or identifying the obligor.

(b) The complaint may be filed in the appropriate court of any State in which the obligee resides. The court shall not decline or refuse to accept and forward the complaint on the ground that it should be filed with some other court of this or any other State where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-112. Representation of Obligee.

If this State is acting as an initiating State the prosecuting attorney upon the request of the court, the State Department of Health and Social Services, a county commissioner, an overseer of the poor or other public assistance director shall represent the obligee, in any proceeding under this Act §§ 20-4-101 to 20-4-138. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-113. Same; Minor.

A complaint on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-114. Complaint Forwarded to Responding State.

If initiating court finds that the complaint sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding State may obtain jurisdiction of the obligor or his property, it shall so certify and cause three (3) copies of the complaint and its certificate and one (1) copy of this Act §§ 20-4-101 to 20-4-138 to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating State. If the name and address of the

responding court is unknown and the responding State has an information agency comparable to that established in the initiating State it shall cause the copies to be sent to the State Information Agency or other proper official of the responding State with a request that the agency or official forward them to the proper court and that the court of the responding State acknowledge their receipt to the initiating court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-115. Payment of Fees and Costs.

An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee but it may direct that all fees and costs requested by the initiating court and incurred in this State when acting as a responding State, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service or other service supplied to the obligor be paid in whole or in part by the obligor or by the county. These costs or fees do not have priority over amounts due to the obligee.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-116. Obligor May Be Detained; Conditions.

If the court of this State believes that the obligor may flee it may:

(i) As an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(ii) As a responding court, obtain the body of the obligor by appropriate process, and may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-117. Child Support Enforcement Section Designated State Information Agency; Duties.

(a) The child support enforcement section within the Division of Public Assistance and Social Services of the Department of Health and Social Services is designated as the State Information Agency under this Act (§§ 20-4-101 through 20-4-138). It shall:

(i) Compile a list of the courts and their addresses in this State having jurisdiction under this Act and transmit it to the State Information Agency of every other State which has adopted this or a substantially similar act. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to the act and a statement of their effective date to all other State Information Agencies;

(ii) Maintain a register of lists of courts received from other States and transmit copies thereof promptly to every court in this State having jurisdiction under this Act; and

(iii) Forward to the court in this State which has jurisdiction over the obligor or his property petitions, certificates and copies of the act it receives from courts or information agencies of other States.

(b) If the State Information Agency does not know the location of the obligor or his property in the State and no State location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the State and other sources.

(c) After the deposit of three (3) copies of the complaint and certificate and one (1) copy of the act of the initiating State with the clerk of the appropriate court, if the State Information Agency knows or believes that the prosecuting attorney is not prosecuting the case diligently it shall inform the Attorney General who may undertake the representation.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1; 1984, ch. 51, § 2.)

§ 20-4-118. Case Docketed in Responding State; Duty of Prosecuting Attorney.

(a) After the responding court receives copies of the complaint, certificate and act §§ 20-4-101 to 20-4-138 from the initiating court the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(b) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this State to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(c) If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-119. Duty To Locate Obligor; Forward Complaint to Another Court.

(a) The prosecuting attorney shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the complaint or otherwise the court cannot obtain jurisdiction the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended complaint from the initiating court.

(b) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this State or in another State, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating State to a court in the other county or to a court in the other State or to the information agency or other proper official of the other State with a request that the documents be forwarded to the proper court. All powers and duties provided by this Act §§ 20-4-101 to 20-4-138 apply to the recipient of the documents so forwarded. If the clerk of a court of this State forwards documents to another court he shall forthwith notify the initiating court.

(c) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-120. Continuance of Hearing; Taking of Depositions; Conditions.

If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-121. Obligor May Be Compelled To Testify; Immunity from Criminal Prosecution; Exception.

If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-122. Privilege of Husband and Wife Inapplicable.

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this Act §§ 20-4-101 to 20-4-138. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter including marriage and parentage.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-123. Proceedings Governed by Rules of Evidence and Civil Action.

In any hearing for the civil enforcement of this Act §§ 20-4-101 to 20-4-138 the court is governed by the rules of evidence applicable in a civil court action in the District Court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to defenses available to an obligor with respect to paternity or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one (1) obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-124. Property of Obligor Subject To Order for Support; Order May Be Forwarded to Another County for Enforcement.

If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders shall require that payments be made to the clerk of the court of the responding State. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-125. Copy of Support Order Forwarded to Initiating State.

The responding court shall cause a copy of all support orders to be sent to the initiating court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-126. Court May Impose Conditions To Assure Compliance.

In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(i) Require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(ii) Require the obligor to report personally and to make payments at specified intervals to the clerk of the court; and

(iii) Punish under the power of contempt the obligor who violates any order of the court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-127. Paternity in Question; Adjudication.

If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous, and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise the court may adjourn the hearing until the paternity issue has been adjudicated.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-128. Duties of Responding Court.

A responding court has the following duties which may be carried out through the clerk of the court:

(i) To transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(ii) To furnish to the initiating court upon request a certified statement of all payments made by the obligor.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1. §§ 20-4-129.)

§ 20-4-129. Receipt and Disbursement of Payments by Initiating Court.

An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-130. Responding Court Not To Stay Proceeding or Refuse Hearing; Order of Support Pendente Lite.

A responding court shall not stay the proceeding or refuse a hearing under this Act §§ 20-4-101 to 20-4-138 because of any pending or prior action or proceeding for divorce, separation, annulment, dissolution, habeas corpus, adoption or custody in this or any other State. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the complaint being heard, the court shall conform its support order to the amount allowed in the other action or proceeding. Thereafter the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-131. Support Order Not Superseded by the Order of Another State.

A support order made by a court of this State pursuant to this Act §§ 20-4-101 to 20-4-138 does not nullify and is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other State pursuant to a substantially similar act or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another State shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this State.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-132. Enforcement of Support Within Wyoming.

(a) The method of enforcement of duties of support provided in this Act §§ 20-4-101 to 20-4-138 is applicable as nearly as possible if both the obligee and obligor are in Wyoming but in different counties.

(b) If the appropriate court of the county in which the petition for support is filed finds that the obligor owes a duty of support and that a court of another county may obtain jurisdiction over the obligor or his property, the clerk of court shall send the petition and a certificate of findings to the court of the county in which the obligor or his property is found. An initiating or responding court and the clerk of court have the duties and powers provided in this Act in enforcing this section.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-133. Attorney General May Appeal or Cause an Appeal in Public Interest.

If the Attorney General is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(i) Perfect an appeal to the proper appellate court if the support order was issued by a court of this State; or

(ii) If the support order was issued in another State, cause the appeal to be taken in the other State. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-134. Registration of Foreign Support Orders; Prosecuting Attorney to Assist Obligee.

(a) If the duty of support is based on foreign support order, the obligee may register the foreign support order in a court of this State in the manner, with the effect and for the purposes herein provided.

(b) The clerk of the court shall maintain a Registry of Foreign Support Orders in which he shall file foreign support orders.

(c) If this State is acting either as a rendering or a registering State the prosecuting attorney upon the request of the court, a State Department of Welfare or other local welfare official shall represent the obligee in proceedings under this part chapter. If the prosecuting attorney neglects or refuses to represent the obligee, the Attorney General may order him to comply with the request of the court or may undertake the representation.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-135. Same; Supporting Documents Required for Registration; Notice to Obligor.

(a) An obligee seeking to register a foreign support order in a court of this State shall transmit to the clerk of the court three (3) certified copies of the order with all modifications thereof, one (1) copy of the reciprocal enforcement of support act of the State in which the order was made, and a statement verified and signed by the obligee showing the post office address of the obligee, the last known place of residence and post office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution and a list of the States in which the order is registered. Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the Registry of Foreign Support Orders. The filing constitutes registration under this Act §§ 20-4-101 to 20-4-138.

(b) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-136. Foreign Support Order Subject to Same Defenses and Proceedings as Order from this State.

(a) Upon registration, the registered foreign support order shall be treated in the same manner as a support order issued by a court of this State. It has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a support order of this State and may be enforced and satisfied in like manner.

(b) The obligor has twenty (20) days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition the registered support order is confirmed.

(c) At the hearing to enforce the registered support order the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If the obligor shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering State. If the obligor shows to the court any ground upon which enforcement of a support order of this State may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this State.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-137. Interpretation.

This Act §§ 20-4-101 to 20-4-138 shall be so construed as to effectuate its general purpose to make uniform the law of those States which enact it.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

§ 20-4-138. Citation.

This Act §§ 20-4-101 to 20-4-138 may be cited as the Revised Uniform Reciprocal Enforcement of Support Act.

HISTORY: (L. 1973, ch. 155, § 1; 1977, ch. 152, § 1.)

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PUBLICATION EVALUATION

Interstate Child Support Enforcement Laws Digest

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